ERRORS AND MISCHIEFS

OF

MODERN DIPLOMACY

THE TREATY OF WASHINGTON.

HENRY OTTLEY.

ON THE

ERRORS AND MISCHIEFS

OF

MODERN DIPLOMACY,

AS BASED UPON

THE ASSUMED PREROGATIVE OF THE CROWN

IN

MATTERS OF PEACE AND WAR;

WITH PARTICULAR REFERENCE TO

THE TREATY OF WASHINGTON OF 1871,

AND

THE NEGOCIATIONS CONNECTED WITH IT,

DOWN TO THE ADJOURNMENT OF THE TRIBUNAL OF ARBITRATION ON THE 28TH JUNE.

By HENRY OTTLEY.

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PART II.

PREFACE.

THE term "Diplomacy" is one of recent origin—a word not known to Johnson, and not to be found in the 5th Edition of the 'Encyclopædia Britannica,' published in 1817, nor indeed, as the writer believes, in any dictionary or encyclopædia published earlier than half a century ago. It is of Greek origin, derived from the word "diploma," which means a letter or epistle doubled up, and not open. It therefore implies duplicity, and secrecy, and is significantly applicable to the vicious practice in the conduct of State affairs, which has sprung up of modern times, as contradistinguished from the more constitutional mode of procedure which formerly obtained.

The unfortunate and undignified perplexities in which we have been involved in connection with the recent Washington Treaty, and the Alabama Claims raised under it, following upon so many miscarriages in State policy which have occurred within the memory of the present generation, have, to use a homely phrase, put this same Diplomacy "upon its trial," and challenged public opinion as to whether our foreign relations are conducted altogether wisely

and for the well-being of the country, or whether, on the contrary, there may not be something radically wrong in a system which deeply affects the vital interests of the country, involving, it is possible, heavy sacrifices of blood and treasure, or prejudicing its most important social and commercial interests, without its having any consultative, much less a controlling, voice in the matter.

Does it not seem in the highest degree inconsistent, that a people who claim the right of exercising, through their representatives, a summary judgment on all matters of domestic policy, from the regulation of the succession to the crown down to the merest parish road bill, should have no deliberative authority in matters which concern the territorial and other material interests of the country, and its honour before the world;—its very position as a great nation? Does it not seem in the last degree absurd, that the crown should have the barren privilege of declaring war, when it cannot put a soldier afoot, or a ship afloat, without the previous sanction of Parliament? Is it to be tolerated that the country, having made the necessary provisions for carrying on a war, having made heavy sacrifices for it in purse and person, should see it brought to a close by an ignominious or unmeaning Treaty of Peace, in which, mayhap, none of the objects with which the war was undertaken, are duly considered, at the mere will and pleasure of the Sovereign and his advisers for the time being, without the opportunity of interposing a word of remonstrance, or even of suggestion or opinion on the subject?

An impartial judgment unfettered by party trammels, or the prejudices of routine, can only answer these propositions in the affirmative. And yet, whilst all other questions of administrative practice have been, and are habitually made the subject of jealous and painstaking scrutiny, there has, as yet, been no attempt at reform in a department of Government which, it is no exaggeration to say, transcends all others in magnitude and importance. In justification of the last portion of the above remarks, it may be observed that in matters of internal policy, and notably in the imposition of taxes, a false step on the part of the executive is immediately controllable by Parliament, and may be remedied before any ill consequences have occurred: thus, a proposed tax on matches, for instance, was withdrawn, and the desiderated amount made up by imposing an additional penny on the income tax; whereas an error in foreign policy, whether it be of war, or peace, or other diplomatic arrangement, involving, perhaps, thousands of lives, millions of treasure, or the dearest sovereign rights of the State, is irrevocable, and without remedy, until it has run its course.

The object of the writer of the following pages is to show that the people of this country have a constitutional right, through their representatives, to know and control what is being done in their name, and on their behalf, and in respect of which they are to be responsible in their lives, their property, and their honour; and that the practice of secrecy, under a pretended prerogative of the

crown, in matters of peace, war, and alliances, is mischievous and untenable, repugnant alike to reason and to the old and recognized principles of the constitution of this, and other nations of Europe.

Whilst the first part of this work will be devoted to the advocacy of the general principle as to the right and duty of Parliament to advise and control the crown in matters of state policy, supported by reference to authority, and historical precedent; the second part will illustrate the mischiefs which have crept up in modern times through a neglect of that wholesome constitutional practice, by a copious analytical scrutiny of the recent Treaty of Washington and the negociations which preceded and followed it, the latter being continued down to the date of the adjournment of the Tribunal of Arbitration at Geneva, on the 28th June.

If, in the course of the latter portion of these pages, there should appear occasional repetitions, and somewhat of irregularity in the order and method of treatment of the different subjects, the reader is requested to make kind allowance for it, in consideration of the circumstance that the work has necessarily been written during the fluctuating progress of the events to which it refers.

June 29th, 1872.

ON THE

ERRORS AND MISCHIEFS

OF

ERRATA.

Page 156, line 2, *for* " Lord " *read* Lieut.

„ 157, line 7 from the bottom, *for* " Packington " *read* Packenham.

„ 164, line 15, *for* " by denouncing " *read* is to denounce.

„ 187, line 3, *for* " more " *read* words.

[illegible] people have become accustomed to consider it as "a fact;"—something indigenous in our time-honoured institutions, which it would be sacrilege to presume to scrutinize or disturb. It is true that, as history shows, the working of the system has not always been exactly satisfactory—at any rate has not always given entire satisfaction to the country, whose honour amongst nations, as well as more substantial interests, is involved in the results of such transactions. True, that occasionally when

some startling diplomatic blunder, past remedy, has been revealed to the "assembled wisdom" of the nation, a faint, hesitating word of remonstrance has been uttered by some independent member on one of the back benches, accompanied by a modest suggestion that in cases involving such important results, it might, perhaps, be better and more reasonable to consult the representatives of the nation before, instead of after, the mischief was done. True, even, that warned by such reminiscences of the past, some legislator, more daring than his fellows, has been known, in reference to some weighty matter reported to be in course of negociation, to ask the Secretary of State to lay some information as to the terms of the proposed arrangement before the House, previous to its definitive adoption. But with what result, all this? There is but one reply from the Government bench to all such grumblers and inquirers, namely, that the ancient and undoubted prerogative of the crown must not be interfered with. Let us, however, undismayed by the fear of such rebuke, now when a great and anxious difficulty is before us—a difficulty clearly "growing out of" our high-prerogative diplomacy—take the liberty of inquiring by the lights which history affords, into the pretensions of the crown in this respect.

Early Practice in European States.

It must be obvious from the very derivation and meaning of the word "prerogative," (from *præ*, before-hand, and *rogo*, to demand), that antiquity—

or continuous enjoyment extending over a period beyond which the memory of man runneth not to the contrary—is essential to its existence. A prerogative cannot be created by Act of Parliament, nor grow up out of encroachments favoured by circumstances of neglect in the lapse of time. It must be pre-existent to, and independent of any compacts or arrangements entered into between the co-ordinate branches of the State for its constitutional government.

It has been too much the fashion to talk of modern times as the era of the birth and growth of liberty; the dark and middle ages being supposed to have been a long, dreary period, when the tyranny of absolute sovereignty prevailed throughout the nations of the world. A little research amongst authorities outside the beaten track of historical copyists, however, will establish that this is not the fact, and that the truth is to a directly contrary effect. The old Gothic institutions, which in the dark and middle ages were the foundation of future civilization, were imbued with the principle of freedom and popular control, carrying checks upon the royal authority to an extent hardly conceivable by those who contemplate the more recent condition of the continental states of Europe. In Germany the Emperor's authority was always extremely restricted in matters of peace, and war, and alliances, wherein he was strictly under the control of the Diet. To give one instance out of many: when Maximilian I. wanted to undertake an expedition into Italy, to oppose the invading forces of Charles

VIII. of France, the Diet declared its resolution not to grant any supply of men or money for the purpose, "till the internal peace of Germany was secured," and he was obliged to abandon the project. The Treaty of Westphalia formally secured the rights and liberties of the States of the Empire, in all matters of internal and external government; and notably "in resolving upon a war in the name of the whole Empire, imposing taxes, ordering the levying and lodgment of troops, constructing new fortresses, or putting garrisons into old ones, as also the care of making peace or treaties of alliance, and other similar matters. "Nothing of this kind," it was stipulated, "shall be done, unless with the free consent of the States of the Empire assembled in Diet." And this law was not intended to become a dead letter. It was complained of at the Congress that the Emperors Ferdinand II. and Ferdinand III. had seldom convoked Diets,—not one, for instance, in the long interval from 1623 to 1640; but eventually the sitting of the Diet became permanent at Rattisbon, from 1665 till the dissolution of the German Empire in 1806.

Hungary, Bohemia, and Poland, in their early times, had also the full enjoyment of independence, and authority in affairs of state. By the capitulation of Matthias with the Hungarian States in the year 1615, it was stipulated that there should be no peace or war without the consent of the Diet, and this was ratified by Ferdinand and his successors. In Denmark and Sweden the case was the same.

In France the prerogative of the kings was, from

the earliest times, under very stringent restraints from the States of the Kingdom. These, under the Merovingian kings, assembled annually in the month of March, afterwards changed to the month of May. In these assemblies, where the king with his great officers and the nobility assisted, peace and war, and all the affairs of government were discussed, and resolutions taken by a majority of votes. In earlier times the States consisted only of the nobility and clergy, but Philip IV., about the end of the thirteenth century, first commenced summoning the cities to the Diet (under the name of *Tiers Etats*), his object being "to secure the approbation of the whole people in the warm contests between him and Pope Boniface VIII." As the kingly power grew, in course of time, progressively with the subjection of the hereditary vassals of the crown, the popular liberties were gradually suppressed, and under Charles VIII. and Louis XI. arbitrary rule may be said to have been inaugurated.

But some idea may be formed of the public spirit prevailing, even in these times, from a passage in the memoirs of Philip de Comines, in which, after denouncing the levying of taxes without the full concession of the people, as an act of tyranny and violence, he went on to say: "It may be objected that in some cases there may not be time to assemble them, and that *war will bear no delay*; but I say that such haste ought not to be made, and there will be time enough; and I tell you that *princes are more powerful and more dreaded by their enemies when they undertake anything with the consent of their subjects.*"

Even so late as the commencement of the sixteenth century, it was found convenient by Francis I. to have recourse to the authority of the States of Burgundy, to justify his repudiation of the Treaty of Madrid, whereby he had pretended to cede that province to his conqueror and rival, Charles V. The States declared that he could not do so, and refused to submit.

In Spain we find the original rights of the people as strongly asserted as in other parts of Europe. The Crowns of Castile, Leon, and Aragon, were in early times strictly elective; the election in the last-named country being pronounced in these terms:—"We, who are as good as you, choose you for our King and Lord, provided that you observe our laws and privileges, but not otherwise." * In Castile it was not until the eleventh century that the hereditary succession was clearly admitted; and the form of recognizing the heir apparent's title in the assembly of the Cortes has been continued until our own time. As regards state affairs, a law of Alphonso XI., in 1328, provides that "in the arduous affairs of our kingdom, the counsel of our natural subjects is necessary, especially of the deputies from

* Mr. Hallam, following a suggestion of Robertson, in his Charles V. (first edition), says that he does not much believe the authenticity of this form of words; but both of those writers admit that it is "sufficiently agreeable to the spirit of the old government." Robertson, moreover, in his second edition, says that the words of the author are given by Antonio Perez; "a most respectable authority." Brulamaqui quotes it from Puffendorff, and argues upon it, as if he found no reason to question its genuineness.

our cities and towns; therefore we ordain and command that on such great occasions the Cortes shall be assembled, and counsel shall be taken of the three estates of our kingdom, as the kings, our forefathers have been used to do." When James, son of Peter III., succeeded to the throne of Aragon, he, with a view of making peace with France, took upon him to ratify a renunciation of Sicily, in favour of Charles II. of Anjou, King of Naples (A.D. 1295). But the spirit of the inhabitants revolted against being assigned over like a flock of sheep, by virtue of a slip of parchment; they renounced their allegiance to the King of Aragon, and placed the crown upon the head of his brother Frederick; and, after five years' fighting, maintained their right to do so. Amongst other instances of the interference of the Cortes in such matters, may be mentioned the conduct of the Cortes of Ocana, who, in 1469, remonstrated with Henry IV. for allying himself with England instead of with France, and averred that "according to the laws of your kingdom, when the kings have anything of great importance in hand, they ought not to undertake it without the advice and knowledge of the chief towns and cities of your kingdom." The following case possesses a peculiar interest at the present day, when the succession to the Crown of Spain is again a matter in dispute. By the Treaty of Utrecht, between the Bourbon King, Philip V. of Spain, and Victor Amadeus, Duke of Savoy (who claimed descent from Katherine, daughter of Philip II., through her union with Charles Emmanuel, Duke of Savoy), it was stipu-

lated that the succession to the throne of Spain, on the extinction of the line of the former, should devolve to the latter and his family; and Totze states that "this arrangement, having been *previously agreed to* by the States of the Kingdom, is justly accounted amongst the fundamental laws of Spain."

In Portugal the prerogative was in early times limited by the States, consisting of clergy, nobility, and cities—the relative powers of the Crown and States being occasionally fluctuating. "In the beginning of the reign of John IV. (1640-1656)," according to Totze they (the States) had great weight, both in foreign and domestic affairs; and everything of any moment relative to war, peace, and taxes, went through their hands. But under John V. (1706-1750), their consideration totally declined, and no Diet has been held since"—the king's power becoming despotic—"except in determining the succession, and an arbitrary imposition of taxes." Such was the state of things towards the close of the last century.

Early Practice in England.

Turning our attention now to what concerns our own country, it is to be remarked, that not one of the earlier authorities on constitutional law, as Glanville, Fleta, Bracton, Britton, Littleton, Fortescue, Fitzherbert, Coke, etc., when treating of the king's rights and prerogatives, make any mention of matters of peace and war as being included

in them. On the contrary, many of them have passages to a contrary effect. For instance, Sir John Fortescue, who was Chancellor under Henry VI., in his 'De Laudibus Legum Angliæ,' a work addressed to the Prince of Wales, says of the king, that "he is appointed to protect his subjects, in their lives, properties, and laws; and for this very end and purpose, he has delegation of power from the people; and he has no claim to any other power than this." And Blackstone, who wrote three centuries later, revives the theory of a delegated authority, as applied to matters of state policy. He says that, "with regard to foreign concerns, the king is the *delegate*, or representative of his people." And, after quoting Grotius, he goes on to show that a Declaration of War, coming from the Sovereign power, is "not so much that the enemy may be put upon his guard, but that it may be certainly clear that the war is not undertaken by private parties, but *by the will of the whole community.*" The very idea of a "delegate" acting "by the will" of others, implies the necessity for a recognized method by which the will of the principals may be declared and communicated to the former; and that method in constitutional states is through the duly-elected representatives of the people. Coke, speaking of the functions of Parliament, and quoting the words of the writ to the effect that they are "touching the king, the state of the Kingdom of England, and the defence of the kingdom, etc.," remarks that these words, "'the state and defence of the kingdom' are large words, and include the rest."

A careful examination of the rolls of Parliament, from the time of the Conquest down to the accession of the Stuarts, will show that during the whole of that long space of five centuries and more, the constant practice was to consult with, and take the authority of Parliament upon all questions of peace and war, and other matters of international policy. We will cite a few facts in confirmation of our position, selected from a mass of cases which would fill volumes.

To begin—we find that William the Conqueror, when meditating the invasion of England, "consulted his barons and great men of Normandy, and with their advice undertook the expedition." The peace which William Rufus made with his brother Robert was "sworn by twelve barons of each nation," and the same ceremony was gone through in regard to the peace between Henry I. and the same Robert. Under Stephen a similar case might be cited. Henry II., to whose arbitration some differences between the Kings of Castile and Navarre were referred, "did not think fit to make any determination upon this point but in his High Court of Parliament, when he ordered the ambassadors to deliver what they had to say," after which, "the earls and barons of the Royal Court of England adjudged plenary satisfaction to be made, etc."

On the other hand, Henry III. called several Parliaments together for the purpose of getting supplies, with which to make war with France, but he repeatedly met with refusals couched in no very

courteous terms. On one occasion, when he had engaged in war of his own authority, and afterwards applied to Parliament for aid, the barons told him that "he had undertaken it unadvisedly; and that his Parliament wondered he could undertake so difficult and dangerous a business without their advice and assent."

The Edwards did not fall under the ridicule which their tyrannical predecessor had justly brought upon himself. They habitually referred to Parliament on all matters of state policy. Edward I. obtained the assent of Parliament before making war upon Llewellyn, Prince of Wales, and after slaying the latter and his brother David, again had recourse to a Parliament at Rutland (May 22, 1282); "and it was there resolved that Wales should be inseparably united to the Crown of England." In the 28th year of the reign of this prince a Parliament was assembled in London, in which a very important matter of state policy was transacted. "The first thing that was done at their meeting," we are told, "was to read before them the Pope's instrument of award between the two kings of France and England, who had agreed to make him as a private person only, under the name of Benedict Cajetan, the amicable composer and arbiter of all wars, controversies, differences, and causes whatever between them." This award is there given at length, "to which, when it was read in Parliament, all the clergy and laity gave their consent."

Edward III., in the course of his long reign, called together no less than sixteen parliaments, to

advise with them on matters of war, peace, and alliances. In the fifth year of his reign he called a Parliament "to consult upon the whole state of his differences with the King of France, asking their advice whether he should refer them to arbitration, or treat amicably with him, or proceed to open war." The prelates, earls, barons, and other great men, "thereupon advised in favour of a treaty; and the king, in Parliament, and with its consent, named the Commissioners for negociating the same," and "part of their powers and business was there prescribed to them." To show that these submissions to parliamentary authority were not mere matters of form, we have a case in the thirty-sixth year of the same reign, when an offer of peace from Robert Bruce of Scotland, being referred to a Parliament, the latter unanimously resolved "that they could not assent to it, as prejudicial to the king's crown."

In the seventh year of the reign of Richard II. we meet with rather a curious case, in which the reason is stated why the people should be consulted, not only before making war, but before closing war by a treaty of peace. A treaty with France was in negociation, but the Chancellor, Michael de la Pole, told both Houses "that the king, out of tender love to his people, and *in consideratibn of the great expenses they had been at during the war,* would not finally conclude the peace without their assent and knowledge, though he might do it because (as it was conceived) France was the king's own proper inheritance, and not belonging to the Crown of

England." And then he declared that "the king desired and earnestly charged them carefully to examine and consider the said articles in relation to this treaty, and advise what was best to be done for the kingdom's honour and advantage."

Henry IV. in the very first year of his reign, and repeatedly afterwards, summoned Parliament "to have their advice" about expeditions he had in contemplation, and as to treaties about to be made. In the reign of Henry V. we read of an alliance with Sigismund, King of the Romans, which "was confirmed, approved of, and ratified by Parliament" in these words:—"Be it known, etc., Our most sovereign lord aforesaid, willing that the said alliance may be perpetual, and the matters contained in the said letters patent having been *duly and solemnly debated in this Parliament, etc.*, by their common assent and consent in the said Parliament, and *by authority of the same*, they did ratify, approve, and confirm, etc." Henry V. consulted his Parliament as to his claims to France, and in his reign a treaty of peace with that country was laid before Parliament, and "ratified and confirmed by the Lords and Commons." Under Henry VI. in several Parliaments the advice of the Lords and Commons was sought for in matters of peace and war. In the ninth year of that reign was passed an Act of Parliament authorizing negociations for peace with France, Spain, and Scotland in these words:—"That it is ordained and advised by the Lords spiritual and temporal, and Commons, being in this Parliament that [certain parties named] may

treat of peace on the king's behalf with the said parties, or any other."

Under the Tudors, who would not easily concede anything that concerned their prerogative, the authority of Parliament in state affairs was never disputed. Under Henry VII. a Parliament was called, A.D. 1488, to which the Lord Chancellor addressed a long statement of the position of affairs abroad, concluding thus:—"Therefore by this narrative you now understand the state of the question, whereupon the king prayeth your advice, which is no other than whether he shall enter into an auxiliary defensive war for the Britons against France." The proposed policy was approved of, and a supply granted. Four years afterwards the same king when meditating a war with France on his own account, summoned a Parliament, which he addressed in person, for the reasons stated by him. "My Lords, and you the Commons," he said "when I proposed to make a war in Brittany by my lieutenant, I made a declaration thereof to you by my Chancellor, but now that I mean to make war upon France in person I will declare it to you myself," ending with, "Go together in God's name, and lose no time, for I have called this Parliament wholly for this cause." After which, we are told, "the Parliament with great alacrity advised the king to undertake the war." In the fourth year of Henry VIII., William of Waring, Archbishop of Canterbury, having addressed the Parliament upon the injustice threatened against the king in withholding from him his dominions, "it was concluded

by the whole body of the realm in the High Court of Parliament assembled that war should be made on the French king and his dominions, and an act was thereupon made."

Queen Mary during her brief and inglorious reign did not get on very pleasantly with her faithful Commons. She married Philip of Spain, in despite of their address to the contrary, and kept herself as much as possible aloof from the representatives of England's nobility and wealth. Nevertheless, "when dangers came to press from abroad" after the loss of Calais, she consented to resort to the advice and assistance of Parliament, but in a disrespectful and unconstitutional manner. Instead of coming down to Parliament, or even sending her lieutenant, as her grandfather Henry VII. had done, she sent for the Speaker of the House of Commons to attend her, and ordered him "to open to them the ill condition the nation was in," and the necessity for putting it into a state of defence. This "gracious message" so ungraciously communicated, met with but little favour at the hands of the sturdy Commons of those genuine unmixed English days, for, as we are told, "the Commons were now so dissatisfied that they would come to no resolution." A week afterwards Her Majesty consented to a more conciliatory, but still a very unusual and unconstitutional mode of proceeding, and sent down to the Commons a deputation consisting of the Lord Chancellor, the Lord Treasurer, the Duke of Norfolk, and several other peers, who, however, met with but a sorry reception.

"The Speaker left his chair, and he with the privy councillors that were of the House, came and sate on the low benches before them. The Chancellor shewed the necessity of granting a subsidy to defend the nation both from the French and the Scots: when he had done, the Lords withdrew; but though the Commons entered both that and the two following days into debate, they came to no issue in their consultation." The Queens death—"Calais" engraved on her heart—put an end to this lame proceeding.

A considerable amount of disagreement of opinion exists as to the extent to which Queen Elizabeth recognised or repudiated the deliberative authority of Parliament in matters of state policy. Davenant says, "She had such an absolute control over the hearts of her people that she did what she pleased with both Houses of Parliament. It being notorious that she drove at no interest distinct from the Commonwealth, she was suffered to pursue the measures tending to the public good in her own method." So far good as a generality; but when he adds—"No wonder, then, if we find her making peace and war, and entering into foreign leagues and alliances, without advising with the great council of the kingdom," he perhaps speaks a little in excess of the truth, whilst the very remark implies that such conduct, if it had been carried out to the extent suggested, was considered by the writer as exceptional and repugnant to that of general usage. It is true that in the first year of her reign she concluded a treaty of peace with France, which she

found under negociation at her accession, and that she afterwards entered into one or two treaties of alliance and mutual defence with France and the Netherlands,—which did not come to much except in respect of any moral effect they may have had,—without consulting Parliament. True, she rather snubbed the assembled wisdom of the nation when it ventured to offer advice upon the subject of marriage. But when, in 1587, the country was threatened with invasion by the Spanish Armada, she addressed herself to Parliament for advice and assistance; and again on the opening of Parliament in the year following. Sir C. Hatton, in the presence of the Queen, recited the circumstances of the defeat of the Armada, and suggested the spirit of revenge it would arouse in Spain, adding, "this is the great cause of summoning this Parliament, that in this most full assembly of the wisest and most prudent persons, called together from all parts of this kingdom, as far as human counsel may advise, a diligent preparation may be made, that arms and forces and money may be in readiness, etc." Parry in his book of learned research, 'On the Parliaments and Councils of England,' states that on the 29th March, 1589, "the two Houses determined on a war with Spain." Again, in the Parliament of 1592-3, as we read in the parliamentary rolls, Lord Burleigh made a long address on the perils of the nation and of France, consequent upon the ambition of Spain, concluding by "referring the consideration thereof to the whole three estates, whereof two are in this

place, how the same danger may be withstood" and especially inviting the Commons "to treat with Her Majesty, and with the prelates and other great men of the realm, and to give your counsels so as it is convenient for us all—first, to consider the perils, and then to give the counsel."

It must have been in ignorance of such facts as those which we have above cited, that Hume, in a History of England which, for a century or more, has been accepted as a text-book, when writing of Elizabeth's reign, asserts, "As to other great points of Government, alliances, peace, and war, or foreign associations, *no Parliament in that age,*" (a large and indefinite term), "*ever presumed to take them under consideration.*" But, that in her own time, Elizabeth was not considered as being invested with sole arbitrary authority in these matters, regardless of the constitutional practice under her predecessors, may be gathered from the observations of the Rev. John Aylmer, published in answer to a book by John Knox, against female sovereignty, or as he was pleased to describe it, "The Monstrous Regiment of Women." "If," writes Aylmer, "the regiment were such as all hanged on the king's or queen's will, and not upon the laws written; if she might decree and make laws alone without her senate; if she judged offences according to her wisdom, and not by limitations of statutes and laws; if *she might dispose alone of war and peace;* if, to be short, she were a mere monarch, and not a mixed ruler, you might peradventure make me to fear the matter the more, and the less to defend the cause." John

Aylmer was, subsequently to the publication of this work, promoted to the Bishopric of London, a fact which we consider may be taken as evidence of the queen's tacit acquiescence in the doctrine set forth by him.

PRACTICE IN ENGLAND FROM THE ACCESSION OF THE HOUSE OF STUART, TO THAT OF THE HOUSE OF HANOVER.

JAMES I. came from Scotland with very high notions as to his "prerogative," which he probably based upon the grounds set forth in his 'Discourse on the True Law of Free Monarchies,' in which he contended that the kings of Scotland did not owe their crown to any primary contract with the people, but to conquest. But it is hard to see how such a doctrine, however plausible in regard to his Scottish dominions, could be extended to apply to England, where a freer constitution, confirmed by ages, prevailed.

'Twere needless to go over the details of the silly and protracted contest which James had with his Parliament on the matter of prerogative; suffice it to say that, although no conclusive result was authoritatively arrived at in favour of the Parliamentary right, that right was never surrendered. This much is certain, that although the king in the first instance, roughly rebuked the Parliament for meddling with the proposed Spanish alliance, and other foreign questions, as "matters above their reach," he afterwards was fain to "crave their advice" in those very matters; as the result of which "both

Houses concurred that *the king could not, with honour and safety, proceed in the Treaties with Spain,* and to fortify the same the Commons gave their reasons and presented them to the king." After this we read that "the king bade them show him the means *how he might do what they would have him,* and the money should be disposed of by their own deputies." And he further promised, "that though war and peace are the peculiar prerogative of kings" (a saving clause, like the "without prejudice" in a lawyer's letter), "*he would not treat nor accept of peace without first consulting them.*" After some further discussion, the Prince of Wales and the Duke of Buckingham came down and announced to Parliament "that the king had declared to them that he was satisfied in honour and conscience he might in this case undertake a war; but *for the manner of declaring it he would take the Parliament's advice.*" In the following year Charles I. came to the throne, and at the very first meeting of Parliament went over all the heads of existing foreign relations, and "left them all to their consideration;" at the same time, suggesting to them "that as they had led his father into the war, so their assistance should not now be wanting."

Passing over the exceptional period of the Commonwealth we come to that of Charles II., in the course of which the old battle about prerogative was resumed—the king asserting that the sole right of making peace and war lay with him; the Commons, on the other hand, representing "that Parliament hath a right to be consulted in matters

that relate to peace, war, and alliances;" and that they practically were so, will appear by the following. In the year 1677, in answer to the speech from the throne, they moved an address praying the king to enter with speed into alliances, offensive and defensive, with Holland and other states, against the growing power of France, and for the preservation of the Spanish Netherlands, and showing reasons why they could not comply with His Majesty's speech, by making any supply until such alliances were entered into, and until His Majesty's alliances are made known; "conceiving that it is not agreeable to the usages of Parliament to grant supplies for the maintenance of wars and alliances before they are submitted to this House." This address was carried by a majority of 182 against 142. In answer to it the king protested, and insisted upon his prerogative, but added some vague assurances of his determination by all means in his power to care both for the security and satisfaction of his people. Parliament was then adjourned. On its reassembling in the following year, the king, in his speech from the throne, said, "When we parted last I told you that before we met again I should do that which should be to your satisfaction. I have accordingly made such alliances with Holland as are for the preservation of the Spanish Netherlands, and which cannot fail of that end, unless prevented either by the want of due assistance to support those alliances, or by the small regard the Spaniards themselves must have in their own preservation."

William III. frequently addressed Parliament

on the subject of our foreign affairs, asking its advice. For instance, on the meeting of Parliament in October, 1689, the king, in his speech from the throne urged the necessity of "providing liberal supplies for the war at the most early period, there being a general meeting appointed at the Hague, of all the Princes and States confederated against France, in order to concert the measures for the next campaign;" adding that, "*till the determination of the English Parliament was known, their determination must entirely be suspended.*" In reply, the Commons expressed their unanimous determination to prosecute the war with vigour and effect, and a large supply was immediately granted. When arranging the preliminaries of the Treaty of Ryswick, the king, in his speech to Parliament, distinctly referred to it as one calculated to bring about an honourable termination of the war "*which he had undertaken by their advice.*" Towards the end of his reign, however (1698), this king fell into the error of negociating the First Partition Treaty, in concert with France and Holland, purporting to adjust the long-pending difficulties involved in the succession to the territories of the Crown of Spain, in a secret manner, not even communicating the fact to any of his ministers, except the Earl of Jersey, till after all was settled; and causing the Lord Chancellor Somers to affix the Great Seal to blank powers, as an authority to the negociators, and afterwards to the ratification of the Treaty. But this transaction created great scandal, and led, eventually, to the overthrow of the Whig Ministry, and the impeach-

ment of four of their number, Lords Portland, Oxford, Somers, and Halifax;—the Earl of Jersey being exempted from prosecution by his Tory friends. Little credit came out of these proceedings, which, directed by party motives alone, were ill supported. The death of the Prince of Bavaria, to whom the Spanish Crown had been allotted by this Partition Treaty, occurred in 1699, and rendered necessary a new arrangement. At this juncture we find both Houses of Parliament taking precautions to prevent a repetition of such conduct as that which led to the Treaty of 1698. They both moved addresses praying for copies of all treaties which had been made with Holland since that of Ryswick, in 1697, and which were given. This was followed up in the House of Commons on the 20th February, by an address, praying the king "to enter into such negociations, in concert with Holland and other potentates, as may most effectually conduce to the mutual support of these kingdoms, and the United Provinces, and the preservation of the peace of Europe," and in the Lords, by an address similar in purport. The king acquiesced in the policy thus presented to him, and on the 18th March sent down a message to the Commons, stating that he had entered upon negociations at the Hague, with the objects above described, "according to an address of this House to that effect," and communicating a statement of the demands made to the French ambassador on the subject, "it being His Majesty's gracious intention to acquaint you from time to time with the state and progress of these negociations, into which he has

entered pursuant to your address above mentioned." But there was a signal disingenuousness in this message, inasmuch as it was delivered five days after the signature of a Second Partition Treaty, (London, 13th March), yet made no mention of it. Nor did Parliament pass over the circumstance in silence. In the Commons an address was adopted to thank His Majesty for his promise of communicating from time to time the progress of these negociations; "and also, to lay before His Majesty the ill consequences of the Treaty of Partition (passed under the Great Seal of England *during the sitting of Parliament, and without the advice of the same*) to the peace of Europe, whereby such large territories of the King of Spain's dominions were to to be delivered up to the French King." The king in his reply adroitly evaded this complaint; he repeated that he "should continue to inform them of the progress of negociations," and that he was willing to receive their advice thereon, "being fully persuaded that nothing would contribute more effectually to the happiness of this kingdom, and the peace of Europe, than the concurrence of Parliament in all my negociations, and a good understanding between me and my people." The Lords also discussed the conduct of the king in this matter, in no pleasant mood; affording strong evidence of the feeling which prevailed still among public men upon this great constitutional question.

Queen Anne also habitually consulted with her Parliament on all matters of state policy. On opening the sessions of 1711, she expressed her joy

at being able to announce that, "notwithstanding the acts of those who delight in war, both time and place are appointed for opening the treaty of a general peace," giving at the same time, an account of the preliminaries. Thereupon, in the Lords, the Earl of Nottingham, after expatiating on the insufficiency and precariousness of these preliminaries, moved an amendment to the address, to the effect "that in the opinion of this House no peace can be safe or honourable to Great Britain or Europe, if Spain and the Indies be allotted to any branch of the House of Bourbon;"—which amendment, after a violent debate, was carried by 62 votes against 54, "against the utmost efforts of the Court." This address having been presented to the Queen she replied that, "she should be sorry anyone could think she would not do her utmost to recover Spain and the Indies from the House of Bourbon;"—without one word of rebuke for any supposed interference with the royal prerogative. In the Commons a similar amendment was rejected by 232 against 105 votes. Again, on the 6th June, 1712, the Queen came down to the House of Peers, and stated to both Houses, in a long speech, "*the terms upon which peace might be made;*"—for, as we are told, "such was the caution of the Lord Treasurer, that he was determined to conclude nothing without the previous sanction of Parliament." After which, we read that "the Commons, with little difficulty, and the House of Lords, after high debate," presented addresses approving of the course proposed; soon after which, Parliament was prorogued. This,

it will be observed, was in June, 1712; and the Treaties whose conditions were thus submitted to, and debated in Parliament, were not signed until the months of April and July in the following year.

Encroachments under the House of Hanover.

It was after the accession of the House of Hanover that the wholesome and constitutional principle of parliamentary control in state affairs first began to be seriously and systematically invaded. A clause had been introduced into the Act of Settlement for the very purpose of restricting the power lately usurped by the crown in this respect, and which provided that, in case of the succession falling to "any person not being a native of this Kingdom of England, this nation shall not be obliged to engage in any war for the defence of any dominions or territories which do not belong to the Crown of England without the consent of Parliament." Upon the principle that the exception proves the rule, it might be alleged that this especial provision recognized the general prerogative which it sought to restrict. But a great constitutional principle cannot be got rid of inferentially, and by a side wind. An encroachment of royal authority, even of centuries' duration, cannot supercede a fundamental right of the people.

But the consultative powers of Parliament were not all at once abruptly repudiated; nor were they suddenly, abjectly, or lightly abandoned. The aggressions of the Court party were gradual and insidious. In 1727, when George I. addressed

Parliament for supplies for the defence of the country against the dangers by the secret articles of a treaty which had been entered into between Spain and the Emperor, the patriotic party in opposition protested against being called upon to provide against imaginary dangers, declaring, that "on this occasion the advice of the House might be quite as necessary as its support; that the question of peace and war was the most momentous that could fall under the cognizance of that assembly," and demanded that the necessary papers should be laid before them, to enable them to deliberate upon the subject. On a division, however, the new system of foreign policy was supported against these arguments by 251 against 81 votes.

Under George II., in 1729, when petitions were presented to both Houses of Parliament from the great mercantile towns, complaining of the obstructions and depredations committed by the Spaniards in the West Indies, the House of Commons, in grand committee, took upon it, without any saving of royal prerogative in such matters, to pass a resolution to the effect "that the Spaniards had violated the treaties subsisting between the two countries," and addressed the king, requesting him to use his utmost endeavours to procure redress for the past, and security for the future; which, in his reply, "he assured them he would not fail to do." In 1731, the king came down to Parliament with a new batch of complications, and a new demand for supplies, saying: "The present critical juncture seems in a particular manner to deserve your atten-

tion, and you need not be told with what impatience the resolutions of this Parliament are everywhere waited for and expected;" and adding, "if it should be necessary, I shall not fail to ask *further advice* and assistance of my Parliament, according to the circumstances of public affairs, and so soon as any proper occasion occurs." In reply to this, the opposition protested "that our ancestors were never so complaisant as to declare their approval of measures without full and regular information respecting them." And then, after discussion of the measures said to be in contemplation, an amendment was moved, "that His Majesty should be desired not to concur in any war against the Emperor, either in Flanders or on the Rhine." The Court party, with Walpole at their head, protested against this as "an encroachment on His Majesty's prerogative;" which brought up Heathcote, who declared "that the *offering of advice* to His Majesty could never be regarded by him as *an encroachment upon his prerogative,* since it was the proper business of Parliament, which was the king's great council, to advise the crown in *all matters of importance;*—it was what many parliaments had done before, and what they were obliged in their duty to do;" and then proceeded to debate all the questions in issue—the Speaker never interposing, which he ought to have done, if he considered that any interference with the royal prerogative was involved in the discussion of the matters in question.

George II. in opening parliament, on November 12, 1747, said: "*By the advice of my Parliament,* I

entered into a war against Spain, in order to vindicate and secure the trade of my subjects. *By their advice, also,* and in conformity with my engagements I undertook the support of the Empress Queen of Hungary, and the just rights of Austria," and mentioned that overtures of peace had come from France, and that a congress had been appointed to meet at Aix-la-Chapelle. On opening the next sessions, November, 29th, 1748, the king announced "that a treaty had been definitively signed by all parties." This statement gave rise to an animated discussion on the address; Mr. Robert Nugent protesting that "he could not give his assent to inserting any words in the address which might imply the most distant approbation of the treaty of peace which had been concluded, because neither he, nor any gentleman in the house could as yet have any knowledge of that treaty, and because, for all the knowledge he had of it, it was the worst of all the bad treaties England had ever made." In both Houses it was contended that better terms might have been obtained, at earlier periods, than had actually been obtained—and in the House of Lords two motions were made for papers and returns relating to previous negociations, which were respectively lost on divisions by 288 against 138, and 181 against 120 votes.

Noteworthy Struggles under George III.

Under George III. the struggle between parliamentary authority and prerogative still continued, the advocates of the former showing a face and

earnestness, which could only be justified or accounted for on a supposition that they had a conscientious belief in the justness of their cause.

During the eventful period of the American War of Independence, Parliament repeatedly, and in spite of the Court, interposed its opinion, fearlessly addressing the crown against further pursuing that unnatural contest. In 1782, General Conway made his famous motion against the further prosecution of the war, as "weakening the country against its European enemies, and postponing the blessings of peace and tranquillity," which the Attorney General Wallace endeavoured to evade by moving as an amendment, "that a bill should be prepared enabling" (let the sticklers for prerogative mark that word!) "*enabling* His Majesty to conclude a truce with America, and to enter into a negociation on this ground." But the original motion was carried by a majority of 19 (234 against 215), and the king in reply to the address was obliged to promise that "in pursuance of the advice of the House of Commons, he would assuredly take measures for the restoration of harmony between Great Britain and her revolted colonies," and for establishing a general peace.

But General Conway, not satisfied with his first triumph, on the 4th March moved "That this House would consider as enemies to the king and country all who should advise, or by any means attempt the further prosecution of offensive war for the purpose of reducing the revolted colonies by force;" and, the ministers not venturing to divide the House

upon the motion, it was carried. So much for prerogative when firmly resisted.

In December of the same year, the king in his speech from the throne, announced that "of his own inclination, and in conformity with the sense of his Parliament and people," he had signed a preliminary treaty of peace. The preliminary Treaties of Versailles were signed on 30th November, 1872; they were laid before the Houses of Parliament on the 27th January, 1783, when they were read at length. On the motion of the minister, they were ordered for consideration in both houses on the 17th February. In the Lords the address approving the treaties was carried by a majority 72 against 59 votes. In the Commons, Lord John Cavendish objected to the passage in the address in which it was stated "that the House had taken the treaties into its most serious consideration," as being untrue, and leading practically to an abandonment of the consultative authority of parliament, and moved as an amendment, "that they would proceed to consider the said treaties with that serious and full attention which a subject of so much importance to the present and future interests of His Majesty's dominions deserved," and that "meantime they would hold the fullest confidence that His Majesty would concert with his Parliament such measures as might be expedient for extending the commerce of His Majesty's subjects." A hot debate ensued, which lasted till half-past seven on the following morning, when the amendment was carried by a majority of 224, against 208. Lord John

Cavendish followed up his advantage by moving on the 21st February a series of substantive resolutions condematory of the Articles of the Treaties as being not such as the country had a right to expect; which resolutions were carried by a majority of 207 against 190 votes. The consequence was the resignation of Lord Shelbourne's ministry, and an interregnum which lasted till the beginning of April.

A long interval followed before the signing of the definitive Treaties of Versailles, which took place on September 3rd, 1783. They were laid before Parliament at the opening of the session, on the 11th December following; when the Earl of Scarborough, in moving the address in the House of Lords, thus referred to the subject:—"The Definitive Articles of pacification have been negociated on the ground of a preliminary treaty digested and formed by an administration which expired on the conclusion of that business. The present ministers naturally felt themselves embarrassed; *the preliminaries were such as no good man could approve of; but the national faith was pledged.* Under these circumstances the Definitive Treaty has been brought to a conclusion; it is a superstructure which has been raised on a basis laid by men who have ceased to exist as the ministers of the crown."

Does not this read like very mockery? The country saddled with a bad treaty, and having its sole revenge in the dismissal of the Ministers who concocted it! A new Ministry compelled to carry out the bad work of their predecessors, which they had already emphatically condemned! The theory

of the "responsibility" of Ministers is cast into ridicule by such a lame and impotent conclusion as that arrived at in the instance before us.

But is it indeed true, that the fact of the preliminaries of a treaty being once agreed upon, forecloses the whole case in all its details, leaving no possibility of modifying anything in the definitive treaty? Common sense,—and that ought to be a guide, when no duly established principle exists to the contrary, points to an opposite conclusion. The doctrines of the acknowledged authorities, living almost within our own time, tend also the same way. Martens in his 'Précis des Droits des Gens,' lays down the principle that a preliminary treaty may be signed "to serve as the basis of a definitive treaty of peace," but leaving many points of detail open to discussion and arrangement before concluding the latter. The Comte de Garden also, writing in the 'Encyclopédie des Gens du Monde,' whilst adhering to the conventionally accepted doctrine that, "from the earliest times in monarchies, the right of ratifying treaties has been regarded as an exclusive prerogative of the throne," goes on to say that "since the new era of representative governments, a system has been established which consists in counter-balancing that power by the legitimate influence which belongs to other powers, over the affairs of the country. One word in an address moved by the Chamber, the refusal of supplies, the impeachment of ministers, are amongst the efficacious means of causing negociations repugnant to the will of the nation to be

annulled." The concluding words of this passage are, it is true, not borne out by the experience of the Treaty of Versailles, nor generally by the modern practice in such matters, but it expounds a theory which appeared to the writer to be reasonable and just, and to which, as we conceive, there would be no difficulty in giving practical efficacy.

But, indeed, the Treaty of Amiens affords an instance, and a remarkable instance, of the adoption of the principle laid down by the Comte de Garden. It may be interesting to note the formalities which, out of deference to parliamentary authority, some remnants of which survived, even in those days, marked the proceedings in this case.

The king in his speech on opening Parliament, referring to the preliminaries said—"Copies of the papers will be forthwith laid before you, and I earnestly hope that the transactions to which they refer will meet with the approbation of my Parliament." The Lords in their Address thanked His Majesty for the promised papers, and assured him that "they would with the utmost diligence take them into their most serious attention;"—the Commons on their part declared that they "would not fail to apply their immediate attention to the transactions to which they related." On the motion of the Ministry the 3rd November, 1801, was fixed for taking the subject into consideration in both Houses, when addresses were moved which led to long discussions, in which all the details were closely scrutinized.

The Definitive Treaty was negociated at Amiens, where it was signed on the 25th March, 1802. It

differed from the preliminaries in many important particulars, being mostly those which had been already the subjects of discussion in Parliament. The following are some of the principal points in which the two treaties differed. In regard to the Cape of Good Hope, the Preliminary Treaty, Art. 3, provided that "the Port and Cape of Good Hope shall be open to the commerce and navigation of the two contracting parties (Great Britain and France), who shall enjoy therein equal advantages." The Definitive Treaty between France, Spain, the Batavian Republic, and Great Britain stipulated that "the ships of every kind belonging to the other contracting parties shall be allowed to enter the said ports, and there to purchase what provisions they may stand in need of as heretofore, without being liable to pay any other imposts than such as the Batavian Republic compels the ships of its own nation to pay." In regard to Malta the Preliminary Treaty stipulated that "for the purpose of rendering this Island completely independent of the two contracting parties, it shall be placed under the guarantee and protection of a third power to be agreed upon in the Definitive Treaty." The Definitive stipulates (Art. 6) that "the independence of the Islands of Malta, Gozo, and Comino, as well as the present arrangement (making provision for their government under the Knights of the Order) shall be placed under the protection and guarantee of France, Great Britain, Austria, Spain, Russia, and Prussia." By Art. 12, Sicily was invited to furnish 2000 men to garrison the above places for one year, after the

restoration of the Knights of Malta, or, if the Knights should not then be prepared, "until they shall be replaced by a force deemed sufficient by the great powers." It was added that the ports should be open to all nations. There are several discrepancies between the two Treaties in what related to the payment of the charges on prisoners on either side, and to restitutions to be made to Portugal. There was also an article added in the Definitive Treaty (Art. 18), stipulating for the indemnification of the House of Orange for losses which they had sustained. Finally another additional Article (19) in the Definitive Treaty declared the Treaty common to the Sultan of Turkey, who was to be invited to accede to it; and who accordingly sent in his adhesion to it on the 13th May, 1802. De Koch in his history of the negociations describes several other changes and additions which were proposed, some by Prince Jerome Bonaparte, who attended as the Plenipotentiary for France, but which were not agreed to.

Lord Hawkesbury, in laying the Definitive Treaty on the table of the House of Commons, on the 29th of May, said, "it was the wish of Ministers to adhere to the usage observed on former occasions of this kind, and as there was no instance where any proceeding had been instituted respecting a definitive treaty, after a preliminary treaty had received the approbation of the House. He was aware, however, that it was competent to every member to bring the subject under the consideration of the House, on the ground of a specific objection to any part of it; of it being inconsistent

with the preliminaries, or of any change of circumstances, and to submit a regular motion on the subject." Mr. Windham said that he would, on Monday, shortly state the reasons which would induce him to move "that the Definitive Treaty be taken into consideration on a future day;" and Lord Grenville gave a similar notice in the House of Lords. In the Commons, on May 3rd, Mr. Windham, after a long speech, in which he discussed the provisions of the Treaty, and more particularly the alterations contained in it, moved that the House would take it into consideration on the 18th instant. Mr. Addington said that "delay might be productive of very great inconvenience, and that of keeping the minds of the people in suspense was not a slight one," and proposed that the Treaty be considered on the 11th instead of the 18th instant; which was agreed to. In the Lords the discussion was fixed for the 13th May. There were divisions in both Houses, in the result of which the Treaty was approved of by large majorities.

The Treaty of Amiens was the last of which preliminaries, in the strict sense of the term, laid before Parliament. The first Treaty of Paris, (Definitive), was signed on the 30th May, 1814, and laid before both Houses of Parliament on the 6th June, when days were fixed for its being taken into consideration. In point of fact, however, this treaty was nothing else than a preliminary treaty, laying down the general principles upon which definitive arrangements were afterwards to be made. Article 32 provided that "within a period of two

months all the powers who had been engaged on both sides in the present war should send plenipotentiaries to Vienna, in order to regulate, in a general congress, the arrangements necessary for completing the dispositions of the present treaty." The opinion of Parliament which was often expressed between the signing of this treaty and that of the Definitive Treaty of Paris, which took place eighteen months afterwards, was not without effect upon the result. For instance, in the debates on the Treaty in both Houses of Parliament, very strong animadversions were expressed upon the unsatisfactory manner in which the question of the abolition of the slave trade had been treated, being disposed of in a separate Article between Great Britain and France, in which both powers agreed to use their best exertions to obtain the universal recognition of the principle, the latter undertaking to abolish the trade amongst her own subjects within a period of five years. In the House of Lords, Lord Grenville, after some forcible and indignant remarks on the subject, "hoped there might yet be some mode in which Parliament and their Lordships might act in pursuance of their unanimous resolutions with a view to the attainment of their object." In the Commons, Mr. Wilberforce moved an amendment to the Address, on the Treaty declaring that the House "relied on the known justice and humanity of the Prince Regent to give the fullest effect which the circumstances of the negociations may allow to the wishes so repeatedly declared by it for the abolition of the slave trade;" which amendment

was carried, and embodied in the Address. These appeals were not made in vain, for, on the 8th February, 1815, at the congress of Vienna, a declaration was adopted by all the contracting parties in accordance, and in furtherance of the separate Article of the Treaty of Paris, and declaring themselves to be "in favour of the universal abolition of the slave trade with the most prompt and effectual execution of this measure possible." Mr. Wilberforce, in the House of Commons on the 20th March, 1815, expressed himself satisfied with these proceedings; and the Definitive Treaty of Paris, in a separate Article, again confirmed the engagement, and announced that the contracting parties had already, "each in their respective dominions, prohibited, without restriction, their colonies and subjects from taking any part whatever in this traffic."

Nor did Parliament confine its interference and advice on the pending negociations to a question of abstract humanity, which, at that time, agitated all well-conditioned minds. On the 13th February, 1815, Mr. Whitbread made a long speech condemning the reported proceedings of the congress, in violation of the territorial rights and independence of states, more particularly the rumoured surrender of Saxony to Prussia, and of Genoa to Sardinia, which, he maintained, were acts inconsistent with the spirit of the Treaty of Paris, and the very principles upon which the war had been undertaken, namely, the repression of the practice of territorial annexation which had been pursued by

Napoleon. He observed that "since the surrender of Saxony Ministers had not contradicted the fact of Lord Castlereagh having been a party to that transaction," and that "he had reason to believe that it was in consequence of the public feeling manifested in this country that ministers had sent over instructions to Lord Castlereagh to present to Congress a note protesting against the act to which he himself had been a party." The members of the Government, in spite of repeated challenges and taunts, remained obdurately silent under these charges. How far they may have been well founded would take too long to discuss here. Certain it is that, according to De Koch, on February 3rd, only a few days before Mr. Whitbread made the speech referred to, the representatives of England, France, and Austria at Vienna, signed a secret Treaty to resist, by force of arms, if necessary, the wholesale annexations threatened by Prussia, in Saxony, and by Russia, in Poland; a policy which was partly successful,—Saxony being allowed to retain about two-thirds of her territories, and Russia abandoning certain districts of Poland.

Again, on the 20th March, Mr. Whitbread moved an address to the Prince Regent "that he would be graciously pleased to direct a communication to be made to this House of the progress made at the Congress now sitting at Vienna, towards the final adjustment and permanent pacification of Europe, of such transfers and annexations of territories as may have already taken place, together with other information touching matters still under considera-

tion, as may be given without prejudice to the public service." Lord Castlereagh did not oppose this motion, but, after a long speech in explanation and defence of his policy, actually seconded it, and, of course, it was agreed to.

Meantime however, the escape of Napoleon from Elba, occured, to interrupt the peace arrangements of the Congress; and on the 25th March the plenipotentiaries of Great Britain, Austria, Prussia, and Russia at Vienna signed a treaty of alliance for the expulsion of the invader. This treaty was not officially presented to Parliament until the 22nd May; but on the 21st April Mr. Wilberforce in the House of Commons called attention to what purported to be a copy of the Treaty which had been printed in the 'Times' newspaper, and which Lord Castlereagh admitted to contain the substance of the Treaty, though with some material inaccuracies. "The Treaty, however," his lordship added "is not yet ratified by all the allied powers, and is therefore not in a state to be submitted to the House." On the 24th April Mr. Wilberforce returned to the subject, and moved an address for "the substance of any treaty or engagement, etc., signed on the 25th March at Vienna;"—and, Lord Castlereagh consenting, the motion was agreed to.

The "substance" of the Treaty was afterwards, in accordance with this vote, handed in, with, appended to it, a memorandum dated Foreign Office, 25th April, to the effect that "the Treaty of which the substance is given above has been ordered to be ratified, under an explanatory declaration to

Article 8," (which invited the king of France to accede to it), to the effect that "it was not to be understood as binding His Britannic Majesty to prosecute the war with a view of imposing upon France any particular government." This declaration was obviously the result of, and in deference to, the strongly expressed opinions of the House and of the public, adverse to the war about to be undertaken. But it did not satisfy the opposition, and on the 28th April Mr. Wilberforce again took up the question. He moved an address to the Prince Regent, "intreating him to take such measures as may be necessary to prevent this country being involved in war on the ground of the executive power in France being vested in any particular person." In the course of a powerful address he animadverted particularly upon "the gross delusion which had been practised on the public by ministers in taking no notice of this Treaty, of which they had received an account on the 5th April, in the Regent's message, which was brought down to the evening of the 6th, and the consideration of which in Parliament took place on the 7th, by which suppression they held forth the possibility of an alternative between peace and war, whilst in fact they had already engaged themselves in the latter." This motion was lost by 273 against 72 votes.

It would be a curious, but extremely grave matter, to consider what might have been the consequences if it had been carried in the affirmative. The natural and only logical course would have been to have

followed up the motion by a refusal of supplies to carry on the war; a war, be it observed, already entered upon. But any party in the House might well have hesitated to adopt the responsibility attendant upon so grave a step; and, as we affirm, the executive ought to have paused before putting them to the anxious and perilous alternative of doing so. At any rate, so gross an anomaly as that of the existence of two co-ordinate authorities, capable at any time of coming into direct antagonism, ought not to be suffered to continue.

Treaties involving Payment of Money not Operative without Parliament.

The grand European settlements of 1815 fell to the ground, as we all know, just as every pretence at interference with the order of succession, and internal government of independent states made before and since that period, have likewise failed. Indeed, these treaty arrangements for European settlements have become only a subject of ridicule, and we might therefore be disposed to leave them to the amateur diplomacy of the Sovereign head of the State, and his responsible "Cabinet," without any interference on the part of Parliament, except from the consideration that it is not creditable to a nation to have things done in its name which come to nothing, and the moral responsibility of which survives the men who had performed them.

But it is not only in the matters of peace, war, and alliances, that the will of the nation expressed through its representatives should have force before

being permitted to take effect; all treaties and conventions, the execution of which may directly or indirectly involve the payment of money, or the regulation of taxation, must depend for their complete performance upon the consent of Parliament. Of this class are commercial treaties, the very spirit and purpose of which depend upon a re-adjustment of custom dues, in conformity with stipulations of reciprocity agreed upon, and which can only be done by the authority of Parliament. But even in these cases, the authority of Parliament has been most unwillingly and ungraciously referred to by the wielders of prerogative; the policy of the treaty requiring such modifications of taxation being generally studiously withheld from its notice. Take, for instance, the famous Commercial Treaty with France of 1860, which the latter country by vote of the Chambers has recently denounced. The 20th Article of this treaty stipulated that it should "not be valid unless Her Britannic Majesty be authorized by her Parliament to execute the engagements contracted for by her in the several Articles of the Treaty." To effect the necessary changes, a Bill to amend the Customs Act was introduced, the order for going into committee on which was fixed for the 20th February. On that occasion Mr. Disraeli objected to Parliament being called upon to sanction so large a change in the fiscal arrangements of the country, without an opportunity of considering and approving of the grounds upon which it was sought to justify its adoption, and moved an amendment that the House should not go further in the matter,

"until it shall have considered and assented to the engagements in the Treaty." This amendment was lost by only 293 against 230 votes. On the same evening in the Upper House the Earl of Derby denounced the conduct of the Government in withholding the provisions of the Treaty, more especially as regarded the equivalents which were to be accorded to this country, and contrasted it with that of Mr. Pitt in reference to the commercial treaty with France of 1787, when that Minister laid upon the table, together with the Treaty, a memorandum of the scale of duties stipulated to be imposed by the French Government upon imports from England. The policy of the celebrated Cobden Treaty has always been more or less a matter of question, and it appears anomalous and unbecoming in the highest degree, that an act so deeply affecting the commercial interests of the country should have been capable of adoption without the sanction of Parliament to its principle and details.

The convention between Great Britain and France for guaranteeing the interest on the Turkish loan, the ratifications of which were exchanged at Constantinople on the 12th July, 1855, affords a still stronger illustration of the ridiculous dilemmas which inevitably attend the half-recognition, *ex post facto*, of the jurisdiction of Parliament in the appropriation of the public funds. The preamble of this convention recites that the Sultan of Turkey had applied to the Sovereigns of France and England in order to obtain facilities for raising a loan, to which request they had acceded; and the terms conditioned that

Her Britannic Majesty "undertook to recommend to her Parliament to enable her to guarantee conjointly with His Majesty the Emperor of the French," and that the Emperor of the French "engaged subject to ratification of the convention by the legislative body of France, to guarantee conjointly with Her Majesty the Queen of Great Britain," interest at the rate of eight per cent. on a loan of five millions sterling to be made to the Sultan. The Legislative Body of France made no difficulty of ratifying this convention; which was thereupon, *quasi* convention between the two contracting sovereigns, complete. All that remained to be done was to induce the British Parliament "to enable" Her Majesty to carry out her guarantee. On the 20th July, accordingly, Lord Palmerston moved a vote to that purport in the House of Commons, and in answer to strong observations of dissent implored them for the honour of the faith of the country, which had been pledged, to consent to it. In the end his lordship's eloquence prevailed so far as to save the honour of the country by a narrow majority of *three*, 135 voting for and 132 against the resolution. Is it, we ask, seemly, is it safe, that the country should be pledged behind its back to pecuniary engagements by the "responsible Ministers of the Crown," which it cannot afterwards repudiate or disengage itself from, without incurring, however vaguely and unreasonably, the odium of breach of faith, or shabbiness, or both?

GENERAL OBSERVATIONS ON THE QUESTION AS IT STOOD AT THE COMMENCEMENT OF THE PRESENT CENTURY.

REVIEWING all the above statements, which have been deduced from our Parliamentary history, from the period of the Stuarts down to within the present century, and which follow the still stronger records of earlier times, we, without at all wishing to press the matter too far, consider it fair to draw the conclusion that, whereas in the earlier periods of our history the consultative authority of Parliament in matters of state policy was distinctly recognised by the Sovereign, the contrary practice, introduced in later years, under an assumption of "prerogative," has met with such steady and systematic resistance on the part of both Houses of the Legislature as practically to amount to a repudiation of the theory upon which this royal pretension is based. We have seen, at any rate, that even within the period of the exciting events which terminated an era of history in 1815, the discussion of the preliminaries of treaties in Parliament was permitted, and led to material modifications in the definitive acts; and that the consultative authority of Parliament was thereby to a considerable extent respected. What we would submit is that the same, or an analogous course, should again be resorted to, by which Parliament should have the opportunity of considering the terms of a treaty before its being definitively signed and ratified. But whilst insisting upon the expediency and propriety of this mode of procedure, upon principle, we by no means overlook an objection which may very reasonably be made to it

in practice, on the ground of the altered circumstances which attend the proceedings of Parliament in our days, from those in the days of the Plantagenets and Stuarts, or even those of the early Georges, namely, in the publicity given to debates, in violation of the rule of secrecy which still, in theory, enures. We can quite understand that to publicly discuss, item by item, the provisions of a treaty which is yet the subject of negociation, might be very inconvenient and attended by injurious results; but we can anticipate no ill consequence from an open and ample consideration of the whole matter being had, when provisionally settled, and apart from the conflicts of purpose and opinion, which marked its progress to completion. Moreover, the knowledge that such an opportunity of investigating and approving a transaction of great national concern before its final adoption would be so far satisfactory to Parliament and to the country as to obviate all inducement to prying and inquiring into the matter in the interim, by the way of questions put across the House to an unwilling and reticent minister, which now frequently occur, with such unseemly effect and such unsatisfactory results. But in addition, and to crown the whole argument, the example of the Treaty of Vienna of March, 1814, as well as that of the Washington Treaty of 1871, shows the impossibility of maintaining the precincts of official reserve against the enterprising researches of those who cater for information in the interests of the public; and it would be well to provide against the repetition of scandals of this kind by the timely

concession of a principle which common sense, the dictates of justice, and the precedents of ages so thoroughly recognize.

Yet there appears but little chance of any such change of practice being effected, unless the public take the matter up in their own interests, and in that unmistakeable way which shows them to be in earnest. The fact will be patent to all who consider our recent practice in state affairs, and compare it with the history of the last century, and the first years of the present, that the prescription of prerogative and official reticence has been progressively more and more sternly insisted upon than ever; whilst the voice of Parliament, in resisting, or even questioning the theory of the ministerial action, has become weaker and more hesitating every day. As a matter of history we quote the report of what took place in the House of Commons at the close of the Session of 1855, relative to the projected Treaty of Peace with Russia. On August 2nd, on the motion for going into Committee of Ways and Means, Col. Reed moved an amendment inviting the Government "to give an assurance that no treaty, or conditions of peace should be finally settled, without having Parliament previously called together." Lord Palmerston, in opposing the amendment, repeated the old unmeaning rhodomontade: "If the House distrusts the Government of the day, if they think that it is capable of concluding a peace betraying the interests and sacrificing the honour of the country, they ought at once to propose a motion the tendency of which should be to place in

other hands the trust which they consider to be improperly performed. But, on the other hand, so long as Parliament is willing to leave to those who hold office that discretionary power which, by the constitution, belongs to the responsible advisers of the crown, I think that the particular motion is one that the House would not be disposed to listen to. Of course the honourable member admits that the power of making treaties is a function which by the constitution belongs to the crown and not to Parliament. It is for Parliament to judge *afterwards* of the conduct of the advisers of the crown; but it is not possible according to the working and the principles of our constitution that Parliament should co-operate with the crown in the conduct of negociations, and the conclusion of treaties resulting out of these negociations."

One of the so-called "learned" members of the House, Mr. Montague Chambers, on this occasion supported the extraordinary pretensions of his Lordship, adding the remark: "The prerogative of the crown was a great prerogative, in the making of war or peace, and the responsibilities of Ministers were great. He, for one, was not inclined to relieve them from their responsibility by assisting in their counsels, upon the question whether they should advise the crown to conclude peace, or prosecute war." And the amendment was ignominiously withdrawn.

Again, in 1864, when a Conference was sitting in London to remedy or accommodate the results of certain blundering in connection with the Treaty for the settlement of the Danish succession, Mr.

Horsman ventured to inquire of Lord Palmerston whether, in the event of any engagements being made by the plenipotentiaries, "they would be submitted to the consideration of Parliament, so as to obtain the sanction of Parliament before ratification by the crown?" In making this inquiry the right hon. gentleman clearly implied that there was lurking in his mind a very strong impression as to the absurdity, not to say illegality of secret diplomacy, together with something of a suspicion that Parliament had a right to be consulted in such matters. But he was satisfied with the usual *ex cathedrâ* reply of Lord Palmerston that "with regard to the function of negociating treaties with Foreign powers, the function is known to be clearly with the crown, acting under the advice of its responsible ministers," and denying the right of Parliament "to know anything about a treaty until after its ratification."

The "Responsibility" of Ministers.

Upon these passages of parliamentary experience it occurs to us to make a few remarks. It may be boldly averred, once and for all, that the so-called responsibility of ministers is but an empty myth, entitled to no sort of respect or consideration. A responsibility, or guarantee, which involves no penalty in person or estate, can be but of an imaginary value. The days are past when dishonest Ministers paid the penalty of their offences against the State with their lives, or liberties; and all the punishment which attaches, at the present time, to a vote of

Parliament censuring in any matter the conduct of the "responsible advisers of the crown" is their retirement from office; when they take up their seats on the opposition side of the House, bent upon thwarting and damaging in every way the policy of the Ministers who have superceded them, and whom they hope, by a fortunate party vote, one day to displace.

In connection with this anomalous and unsatisfactory state of affairs, it may be useful to inquire a little more closely what a "responsible Ministry," as at present constituted, really is; and how far it fills the position of the consultative body which in ancient times supported and guided the crown with its advice. Under the ancient constitution of the country a body known as the Privy Council, and composed of the most eminent and respectable men of the day, including the chief officers of state, was recognized as the adviser of the Sovereign in all matters of state, domestic and foreign; and the members of that body were responsible for their acts to Parliament. It was under Charles I. that the legitimate functions of this important Council began to fall into desuetude, when the king resorted to the counsel of his most confidential and devoted friends, meeting in private in his cabinet; whence the name "Cabinet," which to this day is the corporate denomination of the men who style themselves the "responsible advisers of the crown." The Privy Council still exists in name, but is never called together except at certain state ceremonials, when they claim no deliberative voice, and simply register

ordinances already agreed upon by the "Cabinet." As a matter of practice every person who is appointed one of the Ministers of the Crown, included in the Cabinet, is created a Privy Councillor on taking office; but as a body the Cabinet is an institution unknown to the law of the country, and is virtually absolved from responsibility. "Unless," writes Mr. Chisholme Anstey, in his 'History of the Laws and Constitution of England,' "some direct proof be laid of a personal participation in giving advice, no Cabinet Minister can be holden to answer for the most unlawful measures of the Cabinet; that is to say, unless by a signature, or the setting of a seal, the responsibility of the particular person for the particular measure can be proved. But how to prove it? With the Privy Council, the Book of the Council is lost. The Cabinet, not being a Council of the State known to the law, the journals of its proceedings, if it have any journals, are of no official character, and there is nowhere imposed an obligation for the safe custody or production of such." It has been remarked by another able writer, that mere expulsion from office, by a vote of Parliament, which has come to be considered a sufficient punishment for any crime which a Minister can be guilty of, does not expose, but abundantly serves to cloak and hide the offence; and that their opponents, who supplant them in their places by virtue of a parliamentary majority for a season, show no inclination to press against them for their misconduct—for the simple reason that there is no knowing how soon it may be again their turn to fall into a minority.

What still further aggravates the evils of "Cabinet" government, is the circumstance that in actual practice, the whole Cabinet does not, as a rule, confer upon the course of action to be adopted in the name of the crown; each particular Minister being left very generally to manage the details of his own department. From the evidence of the Duke of Newcastle, before the Sebastopol Committee, it would appear that in the momentous business of our Foreign policy, everything is pretty well left to the Foreign Secretary, who puts himself occasionally in communication with the Prime Minister. "It is the ordinary practice," he further states, "not to hold any council from the prorogation of Parliament till some time in October,"—and it appears that in the critical period, more particularly referred to by the Committee, no Cabinet Council had been held between August and the middle of December, and that during all the interval no steps were taken to inform the members of the Cabinet who happened to be out of town, of important despatches received. Another evil in the practice under the present system, is the mode of communication which it appears is very generally adopted between the Foreign Secretary and the representatives of Foreign Courts. The voluminous correspondence recently published in reference to the Alabama misunderstanding, represents Lord Granville and General Schenck, continually exchanging calls, and discussing and agreeing to all sorts of "understandings" and points of detail verbally, and writing to one another notes marked "private," the contents of

which, though relating to public business, the recipient considers himself bound not to reveal. A remarkable instance of the objectionable practice last-mentioned, occurred in the course of a recent debate, when Lord Granville refused some informations which the House of Lords were most desirous to have as to the nature and progress of certain arrangements, because they were contained in "private" letters from General Schenck. Lord Clarendon, also, in his evidence before the Committee on the Diplomatic Service, acknowledged to the same objectionable practice.

It was by Lord Palmerston, that the absolute extinction of the exercise of the functions of Parliament in matters of peace, war, and alliances, by the assertion of the assumed prerogative of the crown, was finally accomplished; and it is worthy of remark that this very same Minister whilst thus putting forward the prerogative of the crown as against the authority of Parliament, himself paid very little or no regard to the will or opinion of the crown.

Whilst protesting against the existence of any prerogative or right in the crown of such a nature as to warrant the making of war or the conclusion of peace, without the consent of Parliament, we must not be understood to deny that the crown is the proper organ of the community in its relations with other communities. It is only through the crown that the nation can act in these relations; but the crown is bound to act according to the Law and the Constitution, and according to

the Law and Constitution the Crown can act only through the Privy Council. We do not admit that the crown even acting according to law through the Privy Council, is competent to bind the nation in these matters without the consent of Parliament; —neither can we admit any right on the part of Parliament to divest itself of its functions. The all-controlling function of supply belongs to Parliament, and the practice we are now so familiar with of Parliament continuing to vote supplies at the same time that it is denied all authority on matters of peace, war, and alliance, can only be spoken of as a shameful abandonment by Parliament of its duty. But whilst thus maintaining that Parliament is of necessity, the co-equal of the crown in these matters, we would pay all respect to the legitimate action of the crown.

The well-known letter of the Queen which was laid before Parliament by Lord John (now Earl) Russell, at the time of Lord Palmerston's dismissal from office by the Queen, establishes the historical fact that the very same Minister who, more than any other, was in the habit of pleading the prerogative of the crown as bar to the exercise of its functions by Parliament, was also in the habit of disregarding the prerogative of the crown himself to the extent, in Lord John Russell's words, of "passing by the crown and putting himself in the place of the crown." Moreover, the action taken by Lord John Russell in this affair, shows that he, as Prime Minister, had been obliged to fly to the Queen to prevent himself from being equally with herself

deceived and left in the dark. And when it is remembered that no long time after these revelations, the House of Commons forced Lord Palmerston back upon the Queen, and Lord John Russell became his colleague, are we wrong in saying that in the final ascendancy of Lord Palmerston was reached the lowest depth in the constitutional history of England, and that the evil spirit of Secret Diplomacy achieved its greatest triumph?

Inefficiency of Modern British Diplomacy.

We have now to suggest that, independently of all considerations of the subject on constitutional grounds, the ill-success and discredit which have attended our efforts in diplomacy, for many years past, would point to the necessity of a change by which a larger consultative authority should be brought to apply than that of the crown's "responsible Ministers" for the time being. To account completely for the undeniably unsatisfactory working of our present system would demand a more extensive inquiry than would be suitable to the present occasion; including amongst other points a complete scrutiny of the constitution and regulations of the Foreign Office, and its staff at home and abroad; a subject which has been several years under the notice of Parliament, though as yet without leading to any results. A few general observations, however, may be not inappropriate, as indicating some fundamental distinctions between the art of diplomacy as practised by foreign nations, and ourselves respectively; distinctions in which,

in many essential respects, we are at a comparative disadvantage. In the first place it should be borne in mind that diplomacy in England is a comparative novelty—an exotic for which the soil is by nature and habits ill-disposed. Owing to our island position we are shut out from all those questions of boundary, frontier lines, and nationalities, connected with territorial aggrandizement, which form the chief subject of jealousy and intrigue with Continental powers. The only acquisitions of territory capable to us, are in distant parts beyond the seas, those acquisitions being made more questionable by peculiar and dubious tenure; the problem of the relations between colony and mother country being as yet unsolved. For war on the Continent of Europe we have, by nature, no occasion, and for many ages had neither inclination nor aptitude. The wars of the Edwards and Henrys in France, were for a disputed claim of inheritance proper to the Sovereign, in which the nation had no concern, and took little or no interest. In the course of the preceding pages we have cited a few, amongst many passages from the Parliamentary history of the country, which exemplify the guarded relations which subsisted between the crown and its English subjects in regard to those wars.

In the good old days of the Plantagenets and Tudors, this country, having little or no pretence for troubling itself with the theory of an "European Balance," (though Henry VIII., for a brief period, indulged a whim in that direction) took no part in the great European struggles which raged with such

ruinous effects, nor in the diplomatic intrigues which accompanied their progress, down to the end of the seventeenth century. We had no representative at the Congress of Westphalia in 1648, which closed the thirty-years' war,—nor any hand in the Peace of the Pyrenees, which laid the ground for half a century of future wars, to be terminated by the Treaty of Utrecht, in 1713, which was the first great European settlement in which this country took part, and, as it happened, a prominent part.

Our first initiation into the mysteries of Statecraft was occasioned through foreign influences and interests, imported with the *personel* of the sovereignty, after the expulsion of the Stuarts. But in the wars and intrigues which followed, it was not so much the feelings and policy of the nation as against nation, which were the motive influence, as the rivalry of parties, which, during the struggle between legitimacy and constitutional sovereignty, combined the great state question of resisting French ambition, with intrigues and conflicts between Whigs and Tories. The same state of things continued under the first two kings of the House of Hanover; with the inevitable consequence of weak and divided counsels, instead of a strong national policy founded upon a definite purpose.

Passing over the mad and wicked struggle which we waged for twenty years against the French nation in the interests of Divine Right, and the reactionary movement of a later period for forcing liberty and liberal institutions upon nations, whether they were disposed for them or not, under the

auspices of a late popular Minister, our diplomatic efforts of late years have been chiefly guided by commercial objects, or by doctrines of expediency, wholly apart from the great game of international intrigue, and territorial annexation in which the ambition of Continental Sovereigns is still engaged as deeply and as zealously as ever.

It may be well understood, therefore, that whilst in every Continental state there has existed for centuries a school of diplomacy, with defined and studied purpose, and an unvarying stream of tradition to guide each successive Minister, in England the business of diplomacy has received less consideration, and has been carried on by Minister after Minister, following in rapid succession (there have been sixteen changes of the head of the Foreign Office since 1830), upon uncertain principles, regulated too often by caprice, or the chances of the day, or the influences of party; the result being habitual uncertainty and inconsistency. Who can doubt that, but for the unfortunate circumstance of an Aberdeen, "*ce bon Aberdeen,*" being at the head of affairs in 1852-3, the Czar of Russia would never have dared to make his odious proposals for plundering the estates of the "sick man" at Constantinople, as transmitted in the despatches of Sir Hamilton Seymour, and which his Imperial Majesty "requested might be kept secret between the two governments?" And who will doubt that if Lord Aberdeen had not consented to be *particeps criminis* in this felonious transaction, and to hide the nefarious secret from Parliament and the country,

the disastrous Crimean War, and the unworthy Treaty which followed upon it, need neither have taken place? The conduct of Lord Aberdeen in this scandalous transaction can only be attributed to gross turpitude, or a lamentable weakness of judgment, combined with a want of capacity to comprehend the immense wickedness which habitually marks the operations of state intrigue, and in which the Court of Petersburg was proficient.

Another noteworthy instance in which the *personel* of the Minister, and his supposed predilections for one or other of the leading Continental States, were suffered to have a direct influence upon measures of state policy, was that of Lord Palmerston, when, in his excess of zeal for the Second Empire of 1852, and of admiration of its representative, he wanted to extend the scope of our Extradition Treaty with France to include the surrender of political offenders. But the indignant voice of Parliament, and of the nation at large, prevented the accomplishment of this monstrous project, and drove the Minister from office.

Martens, in his 'Guide Diplomatique,' draws some marked distinctions between the principles of diplomacy, which are "based upon truth and natural right," and, "therefore, immutable," and the random practice of diplomacy in which the conduct of negociations, "being more or less affected by accidental and special conditions and considerations of expediency," is "consequently variable." He adds that "the science of diplomacy, notwithstanding its importance, has not always been sufficiently culti-

vated. If some political agents have devoted themselves to the studies which it demands, others have entered upon the career without previous knowledge, or have restricted themselves to glancing very superficially at the works which treat of the law of nations, and the history of the principal treaties." These remarks, we find, are especially applicable to the diplomatic chiefs and agents of our own country, who, besides a want of the peculiar idiosyncrasy of shrewdness, and cunning which should fit them for the arena of international negociations, are necessarily deficient in these stores of experience and that ready resource, which mark their more accomplished opponents.

Within our own time we have had some noteworthy examples of the manner in which the destinies of the country, in its foreign relations, have been confided to the hands of men who have had little or no training to the business. The Earl of Malmsbury, in the course of the numerous discussions which have taken place on the subject of the Washington Treaty, made some pungent remarks upon the evil consequences which had of late years too frequently attended the performances of amateur, or insufficiently experienced diplomatists. By a strange coincidence, it happens that his lordship, in his own career, has afforded a striking illustration of the fact, under circumstances, which, as they are hardly known beyond the pages of the Blue Book in which they are recorded ('Papers relating the Affairs of Denmark'), we may be permitted to repeat here.

It appears that, in 1852, Lord Malmsbury having,

in consequence of a change of Government, been called, without any previous experience of official duty, to the direction of the Foreign Office, found there, amongst other matters which required immediate attention, the Treaty of London for the settlement of the Danish Succession. This treaty had been negotiated during a considerable period, by Lord Palmerston and Lord Granville; and Lord Malmsbury, their successor, could hardly be expected to know much of the ins and outs of the matter. He accordingly appears to have, in a confiding moment, applied to Baron Brunnow, the Russian Minister —but why to him, of all people in the world, we are at a loss to imagine—for some information as to the previous negotiations on the subject. To this request the obliging representative, and zealous servant of the Russian Czar acceded, and, in a letter dated "Ashburnham House, 19th April, 1862" (only three weeks before the execution of the Treaty), we find him writing as follows:—"My dear Lord Malmsbury, I hasten to fulfil my promise of sending you the inclosures, being, first, a copy of the Treaty, with certain modifications which had been indicated by Count Nesselrode, on behalf of the Russian Government; and secondly, 'a *résumé*, etc.,' in which I have given an account of the engagements made by our Cabinets, with reference to the deliberations now going forward in London."

It so happened, however, that this *résumé* made a particularly slight reference to a certain "Protocol of Warsaw," a document of ill repute, which had been secretly signed by Russia and Denmark only, at the

out-of-the-way city above named, in June, 1851, and the effect of which, in connection with the London Treaty, would be to place the Imperial House of Russia next in succession to the Throne of Denmark, in the event of failure of the male line of Prince (now King) Christian; removing no less than thirty-five lives, fifteen of which were males, which stood in the way. To make the position clearer, let us state, that the original protocol of London, of 1850, and the draft convention of March, 1852, between Austria, France, Great Britain, Prussia, Russia, and Sweden, after stipulating the accession of Prince Christian, of Holstein Glücksburg, after failure of the reigning family, provided that in case of extinction of the male line of that prince, "the high contracting parties engage to provide by an ulterior convention for the maintenance of the integrity of the Danish Monarchy;" whereas, in the Treaty of London, of the 8th May, 1852, this condition was altered, at the instance, there is no doubt, of the Emperor of Russia, the contracting parties only stipulating "to take into consideration the ulterior overtures" which the King of Denmark "might think proper to address to them" in the eventuality supposed. The protocol of Warsaw declared that the Emperor of Russia, as head of the House of Gottorp, renounced the eventual rights (they were very remote, at the bottom of the list) which pertained to him in favour of the Prince Christian of Glücksburg, and his male descendants. It then went on to state.:—"At the same time it is understood that the eventual rights of the younger

branches of the House of Gottorp shall be expressly reserved; that those which the august head of the elder branch shall abandon for himself and his male descent in favour of, etc., shall revive in the Imperial House of Russia at any time when (which God forbid) the male descent of that Prince shall become extinct." By this stipulation, the agreed joint action of the contracting parties, in the event of failure of such issue to Prince Christian was effectually avoided, and the purpose with which the Treaty was signed invalidated. Will it be believed that the respectable Ambassador from the Czar in his *résumé* mentioned only the renunciation of his master, and deliberately suppressed the reserves set forth in the above extract? It so happened, however, that on the very day on which the Treaty was signed, Baron Brunnow, the Russian Minister, sent a memorandum to M. Bille, the Danish Minister, citing the whole of the stipulations of the Warsaw protocol, and notifying that in signing the Treaty he did so, on the part of his Government, under reserve of all the rights therein asserted. The Baron afterwards sent a copy of this memorandum to the Earl of Malmsbury, enclosed in a curt official communication, stating:—"In accordance with the orders of my Government, I communicate to your Excellency the accompanying note, which I have this moment given to the Minister of Denmark, upon signing, conjointly with him, the Treaty of this day's date." Lord Malmsbury took five days to consider this obliging communication, and then contented himself with

acknowledging its receipt, doubtless under the wholesome reserve, that "the least said is the soonest mended."

Whilst upon the subject of this ill-considered treaty, it may be proper to state that the reservation by the Emperor of Russia was not the only act of treachery connected with it, tending to frustrate the avowed intentions of the contracting parties. Long after the signing of the Treaty, but about the time when circumstances prognosticated that its provisions would shortly take effect, it became known that previous to, and as a condition of, their signing the Treaty, Austria and Prussia had stipulated with Denmark certain conditions with respect to the internal government of the duchies, which would operate in direct violation of the "integrity" of the Danish kingdom, and of the sovereign independence of the state, which was the primary object of the Treaty. And what momentous results have flowed from this little bit of underhand dealing! The federal "execution" in the duchies, afterwards superseded by their joint occupation by Austria and Prussia, to whom they were eventually ceded by treaty, was the first stage of that lawless aggression which afterwards sealed the doom of Austria and the minor German States at Sadowa, and culminated in the overthrow of France at Sedan. The Treaty of London is no more, and the ultimate fate of Denmark, and the supremacy of the Baltic, are questions which will, in due course, again embroil the Northern and Western Powers of Europe.

As a pendant to the case of Lord Malmsbury,

take we now that of Lord Palmerston, who, having during some twenty odd years filled the office of Secretary at War, without a seat in the Cabinet, and without having throughout the period distinguished himself by any marked participation in state affairs, was, in 1830, in obedience to the exigencies of party, appointed Secretary for Foreign Affairs. The late Sir Henry Lytton Bulwer (afterwards Lord Dalling) in his recently published memoir of Lord Palmerston, prints a short letter written on that occasion by the latter, to an intimate friend and relative, which, as the noble biographer says, "characteristically manifests the situation of a man entering for the first time that laborious department." This remarkable communication, which no discreet friend would have thought of publishing, runs as follows:—

"My dear Sullivan,—I send you the note you wish for. I have been, ever since my appointment, like a man who has plunged into a mill-race, scarcely able by all his kicking and plunging to keep his head above water.

"Yours, etc., PALMERSTON."

When it is considered that upon the "kicking and plunging" of this untried and inexperienced Minister depended the foreign relations of a great nation, and, to a certain extent, the future of all the nations of the world, the mind trembles to think what might have happened, and thanks Heaven that things are no worse, so far as they have gone. The "statesman" thus improvised, commenced his career by inaugurating a policy which has throughout its course been

the subject of great and warm contention, and which, up to the present date, has not, in any essential particular, arrived at a recognized solution; the only unmistakeable result being that England, without effecting any definite object, or establishing any claims to consideration, has only brought down upon herself the suspicion, jealousy, and ill-will of surrounding nations.

And what shall be said of the other Foreign Ministers of our own day? Lord Stanley (now the Earl of Derby) naturally claimed the seals of the Foreign Office, as eldest son of the leader of a powerful party; and to him we owe the first admission of the principle of arbitration in reference to the Alabama Claims. Earl Granville's diplomatic qualifications are clearly deducible from the fact of his being the son of a nobleman who for many years was Ambassador to Paris on the part of this country; his statesmanlike qualities having been subsequently developed by a two years' occupancy of the important post of Master of the Buckhounds. Lord Clarendon became recommended to, and influential at the Foreign Office, from the circumstance that he was supposed personally to enjoy particular recommendations to the esteem of the Napoleonic *régime*.

Are these the men, we would ask, to cope in hard, and subtle, and not over scrupulous diplomacy, with a Nesselrode or a Gortschakoff, a Manteuffel, or a Bismarck, a Talleyrand, a Metternich, or even with a Daniel Webster or a Fish?

But whilst a want of purpose, stability, perspicacity, and all the higher qualities of statesmanship, too generally characterize the head of the

Department of Foreign Affairs, we are led to suspect that the working staff under them is by no means so efficient as it ought to be. Upon any other supposition it would involve an unjustifiable slur upon the aspirants for distinction and advancement at Downing-street, that upon occasions of important missions or negociations, instead of employing some of the regular diplomatic servants of the crown, amateur diplomatists, sought out from amongst the ornamental or influential classes of society, are specially appointed for the purpose. For instance, Lord Durham was sent to Petersburg on a special mission in 1832, and again in 1836; Lord Ashburton went to Washington in 1842, to settle the Maine boundary dispute; when he pusillanimously surrendered every point in contention, for the sake of peace,—signing a treaty which was at the time but too justly stigmatized as a "capitulation." Then the late Lord Lyons, after nearly forty years service in the Navy, was appointed to diplomatic posts in Greece, Switzerland, and Sweden, but afterwards returned to his original profession, leaving his son to take up his honours in diplomacy. Then we find Mr. Cobden taken from amongst the lay element to negociate a commercial treaty with France;* and lastly, we

* In mentioning the name of this eminent and patriotic man, we by no means would imply any opinion upon the soundness of his principles, or the value of his public services; we only suggest that his employment in the public service at all, implies a sad want of ability in the staff of the Foreign Office to deal with great international commercial questions; a want which, to an especially commercial nation, must be peculiarly disadvantageous.

have Lord de Grey and Sir Stafford Northcote, and Professor Bernard, of Oxford, three distinguished amateurs, who never broke lance in diplomatic encounter, deputed to Washington last year to settle in an "amicable" manner a whole string of disputes which had exhausted the best energies of the sharpest men on both sides of the water for many years past; the result being a treaty of which every article involves an ignominious surrender of rights, or principles (to say nothing of rights abandoned by omission),—and all for what?—for the sake of peace, in the interests of trade. So true is it that our present international policy—if we can be said to have any—too generally takes its key-note from what is called the "tone of the market."

Weakness of our Recent Foreign Policy.

It is not to be disguised that concurrently with, and probably as a natural consequence of, that want of astuteness and trained ability in our diplomatic agents, of which we have complained, there has of late occurred a marked and habitual failure in conduct, as regards consistency and vigour of action, and that conservative principle which should jealously guard the national rights and interests by the stern principles of national law. In obedience to vague notions of philanthropy and generosity which have recently got into vogue with us, it has come to be considered noble to abandon constitutional rights and safe-guards, in a vain

belief of promoting a reciprocally friendly spirit amongst our neighbours when we happen to have dealings with them. The idea, however, is a sad mistake. Never was a greater error than to talk of "friendship" in diplomacy;—wherein Monarchs and their Ministers have invariably shown themselves more bitter in hostility, more selfish in purpose, more unscrupulous as to means to be adopted, more ruthless as to results, than in the field of war itself! With such customers to deal with, nothing should be left to honour, much less to generosity. A few instances will suffice to illustrate the way in which England, in obedience to a mistaken chivalrous or confiding policy, has lost ground amongst her neighbours, sacrificing her interests, receding from her position of dignity, or waiving distinct rights; and how this policy has often been more or less influenced by party motives at home.

To begin, was there anything so glorious or satisfactory in the Treaty of Paris, of 1856, which closed the disastrous Crimean War, that we should have been called upon to make a heavy sacrifice of belligerent rights in honour of it, and that in deference to the wish, and in furtherance of the traditional policy, of the haughty foe whom we had vanquished, but not subdued? Yet so it was, that the ink was scarcely dry in the pen which signed that unworthy treaty, when Count Walewski, the French Minister for Foreign Affairs. in a jaunty, off-hand manner, induced the assembled plenipotentiaries, in the interests of "humanity and civilization," to put their hands to a "Declaration,"

abolishing privateering, protecting enemies' goods under a neutral flag, and neutrals' goods under an enemy's flag, and denouncing what are termed "paper blockades."

These principles, so largely and exclusively affecting the belligerent rights of maritime powers, amongst whom Great Britain stands in the foremost rank, were promptly agreed to, as was also a provision for submitting them to the other powers for their acceptance. It was little thought of doubtless at the time, that these principles, with the exception of the first, were but a revival of, and improvement upon the famous declaration of "armed neutrality," which Catherine II. of Russia propounded, and, in combination with other States, endeavoured to force upon Great Britain in 1780, with the sole and averred purpose, of destroying her maritime superiority; a hostile combination which we so gloriously faced and resisted then, and have ever since repudiated. Is the world now grown so wise in its own conceit—is statesmanship so superior in perception and judgment to that in the time of our fathers, that we should lightly disregard the principles which they considered essential to the national dignity and power? And is it not somewhat worthy of remark, that whilst some score or two of states, great and small, who have all to gain and nothing to lose by the change, have responded in the affirmative to the appeal to recognize this new maritime code, the United States of America, being the maritime power next in importance to ourselves, has declined to do so? But, indeed, all pretences to restrict the

natural rights of nations, and to surrender generally, in times of peace, the powers of war, are but futile; and there can, as we apprehend and hope, be little doubt that in any future case of belligerency, no British Government will hold itself too stringently bound by the restraints of the "Declaration of Paris," should the success of the war, and the safety of the state be seemingly prejudiced by them.

In the course of the late Franco-German war we suffered indignities, and committed absurdities utterly incompatible with all idea of a great power in Europe. When Count Bernstorff, in the name of the Prussian Government, sent a stern letter of rebuke for our not having interfered to prevent the export of horses, coals, and arms to France, instead of boldly repudiating the correspondence as being upon a subject on which the Prussian Government had no right to address us, Earl Granville condescended to enter upon a dicsussion in which he certainly justified our conduct, though at the sacrifice of the national dignity which was prejudiced by offering any justification at all.

When the German Army of the North was at Rouen, a detachment of this force seized six British colliers, which were peaceably lying in the Seine, near Havre, and after forcibly carrying away the crews, and casting them helpless on shore, on the very field of hostilities, then actually going on, they proceeded to scuttle and sink these ships in order to obstruct the passage of some French gun boats which were supposed to be approaching. And what was done by our Government to vindicate the hon-

our of the British flag, and the personal freedom of British subjects, which had been thus recklessly outraged? A mild and hesitating letter of remonstrance was written by Earl Granville, to which Count Bismarck replied, justifying the proceeding as one strictly within the rights of belligerency, and citing an English authority, Sir Robert Phillimore in support of his position; but adding in almost the tone of a gracious act of concession, that the German Government would compensate the owners of the vessels for their loss; and with this the British Government were satisfied, and the British press, some portions of which had spoken out very loudly at first, were silenced. In the interests of truth it behoves us, however, to make a brief remark upon this subject. In the first place, as, indeed, need hardly be pointed out, Sir Robert Phillimore, the author of a very valuable work on International Law, has not the province to lay down any dogma concerning belligerent, or neutral rights, or other subject of the kind, unless justified by the authority of the older jurists, who were the founders of the science; except, indeed, under exceptional circumstances under treaty, or municipal law. The right of embargo to which alone the German Government can appeal in its justification, is mentioned by Sir R. Phillimore, as well as by some, but not all of the earlier writers. But this power, the right of which is much disputed, is of a very different kind, and available under very different circumstances, to that usurped by the German Army in this case. Sir R. Phillimore, who speaks of the power by the

French term, *le droit d'angarie*, says: "It is an act of the state, by which foreign as well as private domestic vessels which happen to be within the jurisdiction of the state, are seized upon and compelled to transport soldiers, ammunition, and other instruments of war, in other words to become parties against their will to carrying on direct hostilities against a Power with whom they are at peace. The owners of such vessels receive payment of freight before hand. Such a measure is not without the sanction of practice and usage, and the approbation of many good writers upon International Law; but if the reason of the thing, and the paramount principle of national independence be considered, it can only be excused, and perhaps scarcely justified, by that clear and overwhelming necessity which would compel an individual to seize his neighbour's horse or weapon to defend his own life." Martens in his 'Droits des Gens' states: "The property of a neutral power which is found on the enemy's soil, whether moveable or immoveable, ought to be exempt from hostilities, the belligerent having no power over them,"—and then goes on to say, "It is doubtful whether the universal law of nations permits, except in cases of extreme necessity, the seizure (embargo) of neutral vessels which happen to be in our harbours at the time when the war breaks out, with the intention of employing them for the requirements of the fleet, paying them for their service. Usage has introduced the exercise of this right, but many treaties have abolished it," mentioning several, beginning with that of the Pyrenees, in 1659.

Nor were the above the only instances in which our known weakness of purpose exposed us to indignity and ridicule during the late war. Another visitation of retributive justice for our base desertion of Denmark, and in natural sequence to the disasters of Sadowa and Sedan. Russia taking advantage of the prostrate position of our ally, France, sent a peremptory note repudiating the stipulations of the Treaty of Paris as to the neutrality of the Black Sea. Lord Granville replied in a rather spirited letter, and sent Mr. Odo Russell to the German Court at Versailles to feel the way to their good offices on the subject, but without success. Mr. Odo Russell, however, emulated the the tone of his chief, and talked boldly about treaty obligations, what would be a *casus belli*, etc. But it was only talk. After the unmeaning formality of a Conference, the haughty demands of Russia were assented to, and Mr. Odo Russell, without being called upon for a word of explanation, was shortly afterwards promoted to the distinguished post of Ambassador at the Court of Berlin. So much for 80,000 men, and £80,000,000 of treasure sacrificed in the Crimea!

We cannot pass from this subject without acknowledging the manly conduct of Lord Denbigh and Mr. Cavendish Bentinck, who, at the time the Treaty of Paris was thus being smashed up, brought forward motions in the two Houses, urging that the occasion should be seized to withdraw from the mischievous declaration of neutral rights. They spoke in vain, however, failing to rouse the repre-

sentatives of the two Estates of the kingdom from their habitual pusillanimous inaction.

If the facts and authorities above adduced, import anything, they amount to this, that an unconstitutional and unreasonable practice has crept into action amongst us in matters of Foreign Policy, which has resulted in great mischiefs, and will, in all probability, prepare the way for more, unless timely superceded; and that it is through the neglect and desuetude of the ancient constitutional functions of Parliament that this evil practice has originated and taken root. The remedy therefore is, properly, in the hands of Parliament, whose solemn duty it is to consider the question in all its bearings, with a view to the resumption of their high and responsible functions. But our dependence must not rest upon Parliament alone—Parliament, Court-ridden, and red-tape bound, which, through supineness, or a want of high purpose, is often apt to neglect measures of the most vital importance which do not appeal to it in the interests, and through the routine of party. Should Parliament, therefore, from any cause whatever, shew a hesitation or backwardness in this great national question, let the constituencies throughout the country, comprising the masses who suffer in purse and in person for every error in our Foreign Policy, put on the necessary pressure to awaken their representatives, or intending representatives, to a proper sense of their position. The next general election, which cannot be far distant, will be the time to put the question of Diplomatic Reform, as a test question, to all Constitutional Candidates.

PART II.

THE TREATY OF WASHINGTON, 1871: ITS INDUCEMENTS, AND ITS OUTGROWTH.

THE ALABAMA CLAIMS.

THE entire conduct of affairs in reference to the Treaty of Washington has been marked, in a superlative degree, by all the errors of principle and practice, which have been spoken of as characterizing the recent diplomacy of this country; concession upon concession, in the vain hope of conciliating the good will of our insatiable and unscrupulous opponents; blundering after blundering, in working out the details of the arrangements arrived at, through a want of natural astuteness, trained intelligence, and clearness of expression on the part of the amateur diplomatists to whom the conduct of those important negociations was intrusted. It must be added (and this only makes the case the more deplorable and hopeless), that in all the errors and blundering committed by us on this occasion, we have but followed precedents already too conspicuous in all our transactions with the United States; and most remarkably so in respect of the Maine Boundary, and North-West Boundary questions, in which, as will be shown, hereafter, we have always, after much able and conclusive argument in support of our own position, finished by yielding

to the demands and threats of our opponents, and consenting to arrangements which we had already established to be unjust, and prejudicial to us.

The first unfortunate concession made by us in the present case, was in consenting to change the *venue*, sending our emissaries to the opponents' camp to treat of the merits of demands which we had already, with perfect justice, and in perfect good faith, utterly repudiated. When a demand is made by one party upon another, whether public or private, the natural and usual course is for the former to make it upon the premises of the latter. The very fact of going to seek out a pretended creditor, or one who assumes to have been aggrieved by us, in his home quarters, virtually amounts to an admission that there is some ground for the claim or complaint.

In the present case, also, there were special reasons why Great Britain might have refused to go out of its way to discuss matters with the United States. Conventions had already been negociated and signed in London by the ordinary diplomatic representative of the latter Government —not a special negociator, sent over for the purpose,—for the settlement of all matters in dispute; which conventions the Senate of the United States afterwards refused to ratify.

Without at all quarrelling with the United States for this disappointing result to a long and laborious negociation, in which they were acting within their strict right, it surely was not a ground upon which, if a special congress, or commission were considered

to be necessary, in order to come to a settlement, Great Britain should be called upon to defer to the convenience of the United States, by sending across the Atlantic to treat with them at their own seat of government. Sovereign States have always, and not without reason, held a punctilio in this matter, and not unfrequently have fixed upon some neutral ground, for the meeting of their representatives upon occasions like the present. Independently, moreover, of questions of etiquette, it must be obvious that an embassy of three Commissioners, however able and zealous individually, must act at a disadvantage in a strange place, the very stronghold of the opposite side, with no means of communicating with their Government at home, but that afforded by the telegraphic cable, whilst their opponents would find themselves surrounded by willing advisers and supporters, and with constant opportunity for immediate recourse to their principals upon any matter of doubt or difficulty that might arise. In effect, the history of the Joint High Commission, which assembled at Washington, on the 27th February, 1871, and terminated its labours on the 8th May by signing the Treaty (holding thirty eight sittings in all), abounds in evidence of the disadvantageous position in which the British Commissioners were placed, whether from their own inability, or the preponderating weight constantly assumed and exercised by the United States Commissioners. It is not too much to say that from first to last the latter had it all their own way, laying down the law, and sticking to it, in all that

related to their own pretensions, whilst the British Commissioners put forward claims, or suggested opinions, only to withdraw or to recant them, when they found it hopeless to press them, and that after the humiliating process of referring to their Government at home for authority to do so. The unequalled weakness and clumsiness displayed by them in the matter of what are "generically known as the Alabama claims," and the astounding pretensions which have been since propounded by the Americans, as deducible from the terms of the articles of the Treaty have temporarily engrossed public attention on both sides of the Atlantic, almost to the exclusion of the other provisions in the Treaty, which, however, are important in themselves, and fraught with possible sinister consequences.

We will, however, in the remarks we are about to make, give precedence to the various considerations connected with the "Alabama Claims," which are uppermost in everybody's thoughts, and upon the result of which, probably, depends the very existence and operativeness of the whole treaty.

We will tell the story of the negociations in this important branch of the subject as briefly as possible. At a meeting of the Joint High Commission, held on the 8th March, the American Commissioners set forth a statement of the wrongs alleged to have been experienced by their nation through the acts of the 'Alabama,' and other Confederate cruisers, which had escaped from English ports during the American civil war, consisting of extensive direct losses in the capture and destruction of

a large number of vessels with their cargoes, and the heavy national expenditure in the pursuit of those cruisers; and indirect injury in the transfer of a large part of the American commercial marine to the British flag, in the enhanced payment on insurances, in the prolongation of the war, and in the addition of a large sum to the cost of the war. They added the conciliatory announcement that in the hope of arriving at an amicable settlement, no estimate would be made of the indirect losses, "without prejudice, however, to the right of indemnification on their account, in the event of no such settlement being made." The statement in the Protocol goes on to say that "the American Commissioners further stated that they hoped that the British Commissioners would be able to place upon record an expression of regret by Her Majesty's Government, for the depredations committed by the vessels whose acts were now under discussion. They also proposed that the Joint High Commissioners should agree upon a sum which should be paid to the United States, in satisfaction of all the claims and the interest thereon." To this the British Commissioners replied, "that Her Majesty's Government could not admit that Great Britain had failed in any of the duties imposed upon her by the rules of international law, or was liable for any of the losses referred to," but that "she had already shown her willingness, for the sake of the maintenance of friendly relations with the United States, to adopt the principle of arbitration, and that they had now to repeat, on behalf of their Government, the offer of arbitration."

"The American Commissioners expressed their regret at this decision," and added that they could not assent to submit the question to arbitration, "unless the principles which should govern the arbitrators in the consideration of the facts could be first agreed upon." In all this, it will be observed, there was no expressed or implied repudiation of arbitration as a means of arriving at "an amicable settlement," nor was any idea of the kind indicated in any part of the subsequent conferences, in the course of which the American Commissioners proposed the famous "new rules" to extend the responsibilities of neutral governments in respect of acts committed within their territories, and demanded that they should be accepted as a law for the future, and also "be held to be applicable to the facts in respect to the Alabama Claims."

The British Commissioners had now again to send home for instructions, and at length, at the conference of the 5th April they announced "that Her Majesty's Government could not assent to the proposed rules as a statement of principles of international law which were in force at the time the Alabama Claims arose, but that Her Majesty's Government, in order to evince its desire of strengthening the friendly relations between the two countries, and of making satisfactory provisions for the future, now proposed to agree that, in deciding the Alabama Claims, the principle of these rules would be applied;" and at the five meetings which followed, the Commissioners proceeded to arrange the form of submission, and the

manner of selecting the Arbitrators. On the 12th April, "the American Commissioners, referring to the hope which they had formerly expressed on the 8th March, inquired whether the British Commissioners were prepared to place on record an expression of regret," for the depredations committed by the escaped cruisers, when the British Commissioners replied, "they were authorized to express, in a friendly spirit, the regret felt by Her Majesty's Government for the escape, under whatever circumstances, of the Alabama and other vessels from British ports, and for the depredations committed by those vessels." Whereupon, "the American Commissioners accepted this expression of regret as very satisfactory to them, and as a token of kindness, and said that they felt sure it would be so received by the Government and people of the United States."

And here we pause to make a few remarks upon the incidents which occurred at this stage of the proceedings. With regard to the "expression of regret," or "apology," as the Americans are now pleased to call it, it appears that our Commissioners, adding their own blundering to that of their principals at home, not only aggravated the indignity cast upon us—an indignity unparallelled in the history of nations,—but deprived the act of the one feature of grace, which might have redeemed it of much of its repugnancy of character. Upon referring to the original Instructions to the Commissioners by Lord Granville, we find this passage:—"For the escape of the Alabama, and subsequent injury to the commerce of the United

States, Her Majesty's Government authorize you to express their regret in such terms as would be agreeable to the Government of the United States, and not inconsistent with the position hitherto maintained by Her Majesty's Government as to the international obligations of neutral states." If these instructions had been acted upon spontaneously at the opening of the first conference, with what much better grace would the "expression of regret" have come than afterwards, and, apparently reluctantly, in obedience to repeated demands from the United States! Again, with regard to the new rules of neutral obligations, it would seem from the Protocols, that the first idea of such a benevolent and enlightened project originated with the American Government, and that we yielded to the pressure of necessity in assenting to it. Yet, upon reference to the Instructions, we find Lord Granville informing his Commissioners that, "it would be desirable to take this opportunity to consider whether it might not be the interest" of the two countries, "to lay down certain rules of international comity in regard to the obligations of maritime neutrality, not only to be acknowledged for observance in their future relations, but to be recommended for adoption to the other maritime powers." The British Commissioners do not appear to have mentioned this instruction to their colleagues, and thus deprived their Government of any credit which might attach to the introduction of such an important modification of international law.

Indeed, throughout the proceedings, our unhappy

Commissioners appear to have acted under a feeling of submission and deference to the other side; as if content, in vulgar parlance, to "play second fiddle" to them,—bent, as was too obvious from the beginning, upon conciliating matters, so as to arrive at a treaty of some sort or kind, with as little delay as possible. And sometimes, in the interest of amicableness, they ventured upon clumsy courtesies, which were but ill requited. At the very first meeting, for instance, they sought to pay homage to the other side, by proposing that Mr. Fish should preside, a motion which was met by the United States' Commissioners stating, "that although appreciating the proposal, they did not consider it necessary that a president should be named;" which, to say the least of it, amounted to something very like a rebuff. And, although our poor Commissioners met with rebuffs throughout, and had, in almost every matter, to submit to the dictation of their American colleagues, to the great detriment, as we shall presently see, of the interests reposed in their charge, if not to their own discomfiture, it is amusing, knowing all we know since, to find Lord de Grey, at the penultimate conference, held on the 6th May, volunteering to pass a vote of thanks to the American Commissioners, in the following adulatory terms:—"Lord de Grey said that, as the Joint High Commission cannot meet again after to-day, except for the purpose of signing the Treaty, he desired, on behalf of himself and his colleagues, to express their high appreciation of the manner in which Mr. Fish and his American colleagues had, on their

side, conducted the negotiations. It had been most gratifying to the British Commissioners to be associated with colleagues who were *animated with the same sincere desire as themselves to bring about a settlement, equally honourable and just to both countries,*" etc., and they "would always retain a grateful recollection of the fair and friendly spirit which," etc., etc., etc. To this gushing effusion, Mr. Fish, on behalf of himself and his colleagues, made a very civil, but rather guarded, reply, declaring that he and his colleagues were "gratefully sensible," but by no means reciprocating the asseverations as to the mutuality of sentiment which had "animated" the representatives of the two nations. With covert but now too significant irony, he added that "from the date of the first conference the American Commissioners had been impressed by the *earnestness of the desire* manifested by the British Commissioners to reach a settlement worthy of the two Powers," and that "his colleagues and he would never cease to appreciate *the generous spirit, and the open and friendly manner,* in which the British Commissioners had met and discussed the several questions that had led to the conclusion of a Treaty, which, *it was hoped,* would receive the approval of the people of both countries, and would prove the foundation of a cordial and friendly understanding between them for all time to come."

In this pleasant mood was the Treaty of Washington signed on the 8th May, 1871, the object of which is described in the preamble, to effect "an amicable settlement of all causes of difference" existing between the two countries.

Article I. embodies the expression of Her Majesty's regret for the escape, "under whatever circumstances," from British ports of the Alabama and other vessels, and for the depredations committed by them; and provides for the settlement of "differences which have arisen" between the two Governments, "growing out of the acts committed by the several vessels" in question, by referring the same to a tribunal of arbitration, consisting of five members, one to be appointed each by the King of Italy, the Emperor of Brazil, and the Confederation of Switzerland, and one by each of the parties. Article II. names Geneva, as the place of meeting for the arbitrators. Article VI. provides for the application of the three "new rules" in deciding upon these claims, under reserve that "Her Majesty's Government cannot assent to these rules, as a statement of the principles of international law which were in force at the time when the claims mentioned in Article I. arose." These "new rules," which will enjoy an unenviable notoriety amongst the curiosities of history, are as follows:—

"That a neutral Government is bound:—First, to use due diligence to prevent the fitting out arming or equipping, within its jurisdiction, of any vessel which it has reasonable ground to believe is intended to cruise or carry on war against a Power with which it is at peace; and also to use like diligence to prevent the departure from its jurisdiction of any vessel intended to cruise or carry on war as above, such vessel having been specially adapted, in whole or in part, within such jurisdiction, to warlike use.

"Secondly, not to permit or suffer either belligerent to make use of its ports or waters as the base of naval operations against the other, or for the purpose of the renewal or augmentation of military supplies or arms, or the recruitment of men.

"Thirdly, to exercise due diligence in its own ports or waters, and as to all persons within its jurisdiction, to prevent any violation of the foregoing obligations and duties."

Other Articles prescribed the mode in which the Court of Arbitration should deal with the questions referred to them; and provided that each of the contracting parties should send in a statement of its case within six months after the ratification of the Treaty (which took place on the 17th June) and might send in a counter-case within four months thereafter.

Never was Treaty received with stronger expressions of approval and delight by all classes of the community, than was that of Washington in June last: everybody looked upon it as a really "amicable settlement" of "differences" which had long interfered with the friendly relations so desirable to be maintained between the two great kindred nationalities which held the lead in the march of modern civilization.

It was the universal cheerful understanding that these unsettled "Alabama Claims" were now really to be got rid of, perhaps for nothing, but at the worst for a moderate payment on account of direct damages, without any pretence for claims, visionary and almost indefinable in nature, under the head of

indirect or consequential damages of any kind. Such was the assurance with which every leading authority in both Houses of Parliament, on the 12th June (with the sole exception of Lord Cairns, who expressed some misgivings on the subject), congratulated the country; and as General Schenck, the United States Minister, was in the gallery of the House of Lords, and heard what was said by the noble Foreign Secretary and others, and did not protest against it, and as the speeches in both Houses were published in the usual way in all the newspapers, and elicited no word of dissent from the government or press on the other side of the Atlantic, it was taken for granted that the agreeable view of the case in which we indulged was assented to. It has even been made a matter of complaint both in Parliament and in the official correspondence from our Foreign Office, now that the "Case" put forward by the United States has dispelled these agreeable anticipations, that the United States acted in bad faith in not disabusing us of our error at the time, with the not very logical conclusion, that in not doing so—in not repudiating the construction our statesmen and political writers put upon the Treaty on the first blush of its provisions—they gave adhesion to, and became bound by them. Mr. Fish, however, in his answer to Lord Granville, rather curtly repudiated this argument. Let us take a common sense view of the matter. The discussions in Parliament referred to, and relied upon by Lord Granville, took place on the 12th June, and the exchange of the ratifications of the Treaty

was fixed to take place on the 17th of the same month: does Lord Granville really mean to imply that it was the duty of General Schenck, the United States Minister, to interpose on his own responsibility explanations, or rejoinders, in reference to our Parliamentary utterances, with a view of delaying the ratification of a treaty already diplomatically completed? The idea is most unreasonable; and besides, if acted upon, would, according to the modern theory of diplomacy, have availed nothing; it being held that ratification is a matter of course which cannot be refused by the Sovereign, unless upon the ground that its plenipotentiaries have admitted something into the treaty without instructions, or contrary to instructions. No doubt, the American Government showed great firmness and closeness in keeping their counsel; but they were perfectly at liberty to do so, and their doing so only postponed a discussion which was not to be indefinitely avoided.

In the pleasant feeling of complacency in which we had wrapped ourselves, all the summer and autumn, it may well be conceived how great was the astonishment, how great the bewilderment, how great the indignation and disgust, when, towards Christmas last year, the American case made its appearance, being scattered ostentatiously in several languages, amongst all the courts of the old and new world; and when it was found to contain and insist upon every claim for "indirect" as well as "direct" damages that had ever been propounded by the American Government in its most exacting and unfriendly moods. In the first excitement of the moment

Diplomacy cast aside its accustomed reserve, and Ministers adopted what Lord Russell has termed the "grave," and as we consider it, the unconstitutional and unprecedented course, of referring to the matter in a paragraph of the Queen's Speech at the opening of the session of Parliament, where mention is made of claims being advanced "which do not appear to me to come within the reference;" it being added that her Majesty had directed "a friendly communication" to be addressed to the Government of the United States on the subject.

Of this proceeding, we repeat that it was most injudicious, as well as contrary to usual practice. It was an announcement from the Throne to the two Houses of Parliament of certain views as to the carrying out of the provisions of a Treaty already agreed upon, and of full operative force,—views diametrically opposed to those just formed by the other party to the Treaty; thus inviting a decision, by authority of the three Estates of the realm, condemnatory of the conduct of that party, being a friendly power. A declaration thus solemnly adopted could have but one effect, namely, to render terms of accommodation, involving the slightest concession on either side, impossible; and no "friendly communication," following upon it, could remove or smooth the difficulty thus recklessly conjured up. But in truth, whatever hope there might have been of extracting anything from the generous humour of the government of the United States by this clumsy and humiliating appeal, was, on the very evening when the fact was announced, dashed to the ground by the unfor-

tunate temper of the intractable Premier, who, far from imitating the judicious reserve of his noble colleague in the other House, denounced, and that in most violent, dogmatic, and offensive language, the conduct of the United States, and noisily challenged the whole world to dispute his own constructions of the terms of the Treaty, as being "the meaning, the only meaning, the rational meaning, the direct grammatical meaning." All this could only imply that the Government of the United States, supposing it to be gifted with ordinary intelligence, must have been guilty of deliberate dishonesty and attempted extortion, in putting forward pretensions which were subject to be repudiated in such emphatic terms; and it is not to be surprised at that, upou this, if upon no other grounds, that Government has persistently declined, in spite of our reiterated appeals, to withdraw, or modify, one iota of their case, and thereby involve the risk of appearing to plead guilty to Mr. Gladstone's unhandsome imputation.

The long and dreary correspondence which has since taken place between Lord Granville and Mr. Fish has thrown little new light upon the subject. We are sorry to add that neither in matter nor in manner does it redound in any way to the honour of diplomacy as a profession, being at once dogmatic and undignified; dealing throughout in that lowest form of homely contention, known as "fending and proving," in the course of which, averments on either side are often demurred to on the other, in a manner which approaches very nearly

that simple process, familiarly described as "giving the lie."

A lamentable instance of this occurs whilst yet we are writing. Sir Stafford Northcote, one of the Commissioners, after long enforced silence, gave utterance to a speech at Exeter, early in the month of May, in which, in confutation of positive statements by Mr. Fish and General Schenck, to the effect that there was no waiver of the indirect claims at the Conference at Washington, he deliberately stated: "We (the Commissioners) are distinctly responsible for having reported to the Government that we understood a promise to be given that these claims were not to be put forward, and were not to be submitted to arbitration,"—adding, "that being so, we are, of course, brought into painful relations with, and painful questions arise between ourselves and our American colleagues upon the Commission." The cool simplicity of all this would be laughable, if it were not painful to think that a British diplomatist should pretend to invoke an "understanding" as qualifying a written contract. Moreover, the very reference to such "understanding," if it existed, would imply that the written document, unqualified by such oral understanding, would have carried the interpretation it is sought by us to controvert. It is not surprising that this charge should be looked upon as a serious matter in the United States; and accordingly we find General Butler taking it up, and moving in the House of Representatives, "that the President be required to inform the House if a promise to the effect stated by Sir Stafford North-

cote had been made; if so, by whom, and under what authority; and if the Senate is controlled or influenced by such a proceeding." The Foreign Affairs Committee, to whom this motion was referred, have reported in favour of its being entertained; so here is a new sore opened up between the two countries and their Commissioners.

But hardly had the excitement occasioned by this extra-judicial announcement by Sir Stafford Northcote subsided, when Professor Bernard, one of the British Commissioners, in his ill-judged lecture at Oxford, threw a new cloud of mystery over the subject, by suggesting that with a view to conciliation, the Treaty was purposely made a little ambiguous. After observing that a treaty "is an instrument which you cannot send to be settled in a conveyancer's chamber, nor commit to a knot of wrangling attorneys," he says it is one in which the "punctilios of self-respect of Governments have to be consulted, and discussion must never be suffered to degenerate with altercation." And for this reason "it is often necessary for the sake of agreement, to accept a less finished, or even a less accurate expression, instead of a more finished or more accurate one; and it must be construed liberally and reasonably according to what appears to be the true intention of the contracting parties." In contradistinction to this theory of the advantages of adopting "less accurate" language in order to facilitate an agreement, however, Professor Bernard, in another passage says: "The Treaty of Washington was carefully framed to embrace only specific claims, such as had

previously become known to both Governments under the name of the Alabama Claims, [but the indirect claims had also become known to both Governments], for losses and damages *caused by* the acts of certain vessels." These last words do not correspond with the words of the Treaty, which speaks of losses "growing out of," but they are decidedly more exact, and intelligible, and it is only to be regretted that Professor Bernard did not think of this in time to persuade his brother Commissioners to adopt them in the Treaty.

But whilst all this undignified squabbling has been going on, it is most regrettable and humiliating to find that the British Government have thought it becoming to enforce their demand for the withdrawal of the indirect claims, by holding out the threat of resorting, in case of refusal, to an alternative utterly inconsistent with justice, and therefore utterly unworthy of a great nation. All who justly appreciate the sanctity of international engagements must indignantly repudiate the theory which has been propounded day after day, in certain quarters, in and out of Parliament, that because there arises a misunderstanding as to the construction of a treaty, either party to it is at liberty to tear it up like a piece of waste paper; nay more, that a treaty is a thing of so fragile a nature, that it ceases to exist if any disagreement be raised about its import. Yet in the perplexing case before us such a doctrine has been propounded; and we have been coolly told that if we are not at one with the United States upon the interpretation of this particular Treaty,

"the agreement turns out to be no agreement, and falls to the ground." The answer to this is simply that "agreement" and "treaty" are not exactly convertible terms; that an agreement, resulting from a thorough mutual understanding, should precede the treaty; and that if such a doctrine as that propounded above were to be admitted, there would be no certainty, no security in international contracts of any kind, and that the signing of treaties would degenerate into a sort of "handicap" transaction, in which either party is at liberty to cry off, if he does not like the weights, and that without paying forfeit.

Upon the whole, we can but agree with the Americans, that, however exaggerated and intolerable their "Case" may prove to be, the function of deciding upon it rests with the Court of Arbitration, who are the sole judges of their jurisdiction under the articles of the Treaty relating to the matters referred to them. But our Government, ignoring this principle, after much doubt and vacillation came at length to the resolve of sending in a "Counter-case" to the "Case" of the United States, in which they decline treating in any way with the indirect claims, and which document they accompanied by a note, addressed to each of the arbitrators, in which they "expressly and formally intimate and certify" that this Counter-case is presented "without prejudice" to the position assumed by Her Majesty's Government, and under "express reservation of all Her Majesty's rights, in the event of a difference continuing to exist between the high

contracting parties as to the scope and intention of the reference to arbitration;" and add that they will, if necessary, communicate further on the subject, at or before the time limited by the 5th Article of the Treaty." It was well understood that our Government, in so acting, contemplated withdrawing altogether from the arbitration in case the claims for indirect losses were not withdrawn before the 15th June, being the day fixed for the re-assembling of the Court of Arbitration; but in pursuance of their usual hesitating and uncertain policy they, "out of motives of delicacy," as they allege, did not communicate anything to that distinct effect to the arbitrators: and the consequence may yet be another misunderstanding, a misunderstanding with the arbitrating powers,—leading to confusion worse confounded.

For, though Lord Granville seems to forget it, there are other parties besides the actual litigants who are entitled to honourable consideration in this proceeding, but who, unfortunately, have been by implication subjected to unexampled indignity through the irregular discussions which have been permitted to occur—namely, the Sovereign States who, at the joint request of the contending parties consented to arbitrate in the matter, and who have appointed distinguished jurists on their behalf towards that end. In matters of litigation before an ordinary tribunal the discussion of a case "out of court" is justly visited and resented as an act of "contempt." Sovereign states cannot commit one another to "durance vile" for such a cause;

neither can a tribunal of arbitration composed of sovereign states enforce its judgments, in the way of civil courts of judicature, against recusant parties. But there is still some respect due to the good offices of mediating states, the denial of which they are entitled to resent under penalties only limited by their own discretion, and their power to enforce them.

Putting it in the mildest form, it would be entirely a matter of option with the Italian, Brazilian and Swiss Governments, in the case of our ultimate repudiation of their functions as arbitrators, whether they should, or should not, treat the occurrence as one calling for the interruption of friendly relations. Moreover, as such a breach would destroy the whole Treaty, the Emperor of Germany might equally, in such case, be at liberty to treat as he thought proper the breach of good faith incurrred in the withdrawal from his arbitration of that troublesome question of the North-Western Boundary, which has been referred to him. We may, perhaps, have good reason to hope that there are no combinations of policy which might induce the several Foreign States referred to thus to resent our withdrawal from our treaty obligations, but the eventuality is one of such serious character and import, that we ought not to leave it possible at the discretion of others. As to the action open to the United States in such a contingency, it might assume the form of war. There would be little probability, perhaps, of such a result immediately occurring in the present case; but the option would be in the hands of our

opponents, and might be held in reserve till the arrival of any favouring occasion; and in the meantime, perhaps to all time, we should stand before the world branded with the charge of bad faith, which ranks amongst the most odious crimes known to nations.

With such reflections on our mind, we approach the consideration of the merits of this lamentable controversy, and the negociations of the Treaty of Washington generally, as set forth in the official documents before us, with no very cheerful or confident prepossessions. Restricting ourselves, still, to the Alabama Claims, it will be observed, in reference to the protocols, that the American Commissioners made no suggestion, expressed or implied, that, in agreeing to the proposal of the British Commissioners for an arbitration, accompanied by the concessions made by the latter, including the "apology" and the acceptance of the "new rules," in lieu of the payment of a lump sum, as they had at first proposed, they looked upon the modification of the proceedings aimed at as in any way militating against their "amicable" character; and it may be added, that if they had given any hint of the kind the British Commissioners would probably have had the prudence and the firmness at once to refuse completing the transaction. Yet in their "Case" the American Government has the coolness to assert that "the British Commissioners *declined* to make the 'amicable settlement' which was proposed on the part of the United States," and that thereupon followed other negociations which led to "an arrange-

ment" which they would have the world to understand was distinct from all idea of amicableness. The preamble to the Treaty speaks of it as being framed as the means to "an amicable settlement;" and it is remarkable, and to be regretted, that neither of the Governments in citing the Treaty in their "Cases," thought it of importance to quote this preamble.

Charge of Unfriendliness against the British Government.

But, alas!—too certain it is that whatever friendly and generous sentiments may have animated the two Governments, as represented by their Commissioners on the signing of the Treaty in May, 1871, very little of these feelings long survived on the side of our opponents. The American Government open their "Case" by declaring that "they purpose to show that from the outbreak of the insurrection of the Southern States of the United States there was on the part of the British Government a studied unfriendliness, or fixed predisposition adverse to the United States, which furnished a constant motive for the several acts of omission and commission hereinafter complained of as inconsistent with its duty as a neutral." Not to comment on the infinitely bad taste of such a remark, it might, in strict reason, be asked whether under the provisions of the Treaty it could properly be introduced in any proceedings based upon it. The claims "growing out" of the acts of the escaped cruisers is the only matter referred to the Court of Arbitration, the first of which escaped in the spring

of 1862, whilst the outbreak of the insurrection took place early in December, 1860, nearly a year and a half previously. With nothing that occurred between these two periods has the Court of Arbitration any concern, and the reference to the occurrences and discussions which may have taken place during that interval, can only have been made with the object of showing an evil *animus* on the part of Great Britain, and thereby of aggravating against her any damages accruing for specific acts which occurred after its expiring. In ordinary judicial procedure the interpolation of such allegations would be denounced as "impertinent," and might vitiate the whole case as for "uncertainty," that is, as rendering it impossible to define the portion of damage properly attributable to the conduct of the respondent before, and after, the date at which the matters under reference commenced.

Of such materials, nevertheless, is more than the half of this "Case" composed. The British Government, in its Counter-case, very properly "distinctly refuses to enter upon the discussion of these charges," as being "inconsistent with the self-respect which every Government is bound to feel," and also, "because the matter in dispute is action, and not motive, and therefore the discussion is irrelevant." If in these pages we refer briefly to one or two of these complaints, it will be purely as a matter of history, and not as having any import upon the merits of the questions in dispute.

The first ground of complaint against us is the promptitude with which the Southern States were

recognized as belligerents, and the Queen's proclamation thereon, issued on the 13th May, 1861, after the declaration of blockade by the United States Government. It is not pretended to deny our Sovereign right to make that recognition, and to issue that proclamation, but it is declared that "*in making this matter part of this "Case"* (which we maintain cannot properly be done), "the United States Government, with deep and unfeigned regret, have been forced to conclude, from all the circumstances, that Her Majesty's Government was actuated at that time by a conscious unfriendly purpose towards the United States."

In answer to this whining appeal, it may be remarked that without belligerency there could be no neutrality, and consequently no application of the provisions of the Foreign Enlistment Act. The Queen's Proclamation accompanying the recognition of the Confederates as belligerents, gave solemn notice of the fact, and recognized the Blockade proclaimed by the United States, enjoining her subjects to respect it; and Her Majesty's Government continued to recognize such blockade afterwards, notwithstanding that it was commonly known that through the weakness or inefficiency, or both, of the United States Marine, that blockade, as states the British Counter-case, was "very imperfectly maintained," and that the British Government was in consequence "frequently urged to disregard it, both by the Confederate States, and by persons desirous of trading with them." But, as the British Counter-case points out,

the British Government was not premature,—was not the first, in giving practical effect to the declaration of belligerency. The United States Government had already put the blockade in force, within the State of Virginia, as early as the 30th April, (thirteen days before the Queen's Proclamation), and it was extended to the other Confederate States before the end of May. A considerable number of neutral ships and cargoes were captured for breaking the blockade, some at or near blockaded ports, others on the high seas. Vessels or cargoes so captured were carried before, and condemned by, American prize courts, and the validity of the sentences so pronounced, was upheld by the Supreme Court of the United States. Mr. Justice Grier, in delivering the judgment of the Court on this question, said: "To legitimate the capture of a neutral vessel or property on the high seas a *war* must exist *de facto*, and the neutral must have a knowledge or notice of the intention of one of the parties belligerent to use this mode of coercion against a port, city, or territory in possession of the other;" and in another part he said: "The proclamation of the blockade is itself official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure."

One would have thought that, upon reflection, the American Government would have seen it prudent, as well as respectable, to allow this weak and silly charge of "unfriendliness" to pass without further notice, in the hope that it might be forgotten. But

no; in their Counter-case they return to the charge, and impute to us that in this recognition of belligerency we had assumed that "these rebels against the United States were invested with some undefined political attributes;" and that "this was the origin of certain errors which run through the Case of Her Majesty's Government." Whereas, all that we did was, whilst acknowledging the belligerent action of the United States in establishing a blockade over a wide sea-board of their territories, to recognize also the belligerency of the revolted provinces with whom they were at war; which latter, by the primary rules of natural law, we were bound to do. Further than that, we did not go; we did not send a Minister to Mr. President Davis, we did not receive his ministers or agents, nor in any way hold those relations with the Confederate States, which are usual between Sovereign States. Nay more, the American "Case," with consistent inaccuracy, when contrasting our conduct during the civil war with that of other states, instances the fact that "the Russian Government ordered that *even* the flags of men-of-war belonging to the seceded States must not be saluted." It is a fact that our Government issued similar orders addressed to all the Governors of British Colonies. Experience gives hard lessons. Had our Government foreseen the manner in which their loyal and considerate conduct was to be requited by the United States, they would, perhaps, have done well to disregard the United States blockade and belligerent position altogether, letting things take their chance, fully pre-

pared to accept the less onerous responsibilities of belligerents if required.

The affair of the "Trent," in which the British Government promptly and righteously resented an unparallelled outrage offered to its flag, is, with equal reasonableness, complained of as having "indicated an unfriendliness so extreme as to approach to a desire for war." There can be no doubt that from one end to the other of the land, and throughout the colonies where the news of the event had reached, there was not a "desire," but a determination, as out of solemn duty, to resort to war, if fitting reparation were not made for this outrage; and preparations were promptly set afoot in all our arsenals, which took our American friends a little aback. But our Government behaved with great consideration, not to say leniency in the matter. In the first place, the release of the captured agents of the Southern States was demanded, together with "an apology" for the outrage; but when Lord Russell received from Mr. Adams an assurance that the act complained of had not been authorized by the American Government, he consented to accept that statement in lieu of the "apology" demanded. What "unfriendliness," then, it may be asked, could be construed out of our taking exception to an act of violence committed by a person ostensibly acting in the service of another power, but who, in fact, was not authorized by it to commit the wrong complained of? As an instance of the candour and *bonâ fides* which mark, throughout, this extraordinary state document, we must add that the "Case" follows up its previous

general complaints of "unfriendliness" in this matter, with the very serious charge against our Government, that the intelligence of Mr. Adams' official disavowal of the conduct of Captain Wilkes, "was suppressed, and public opinion encouraged to drift into a state of hostility against the United States," and that "the peremptory instructions to Lord Lyons were neither revoked nor in any sense modified." The reader, perhaps, would be "surprised to hear" that the whole of this statement is entirely false. The outrage complained of took place on the 9th November, 1861; and upon becoming known to the British Government, was at once taken notice of in the emphatic manner already indicated—and, be it added, with prompt response. Lord Russell received a despatch from Lord Lyons, announcing the submission of the American Government on the 9th January, 1862, and on the following day sent back a reply, fully accepting the settlement arrived at, and adding: "It gives her Majesty's Government great satisfaction to arrive at a conclusion favourable to the maintenance of the *most friendly relations* between the two nations." The Government of the United States, on its part, marked its displeasure at the perilous indiscretions of Capt. Wilkes, by forthwith promoting him to the rank of Admiral.*

* As there are some people who yet have doubts as to the legality of the seizure of Messrs. Mason and Slidell, the Confederate envoys, on board the Trent, it may be well to give a few words of explanation on the subject. There is no question that the despatches of a belligerent are contraband of war. Heffter enumerates amongst the acts illegal to neu-

The New Code of Neutral Obligations.

The American Case, in a dissertation occupying 109 pages, and headed "Duties of a Neutral," and

trals, "the forwarding of despatches to or from a belligerent." But they must be despatches in connection with the war, and for the purpose of promoting it; as from one part of a belligerent's dominions, or from one part of his field of operations to another, or to an ally in respect of the conduct of the war, or on political affairs connected with it. So it is laid down by Lord Stowell, and he adds that "despatches from a belligerent to his consul resident in a neutral state, may lawfully be carried in a neutral vessel, because the functions of the consul relate to the joint commerce in which the neutral, as well as the belligerent, is engaged." Much less are the despatches of a belligerent to a neutral state to be held contraband of war; —whether they relate to matters of interest to the subjects of the two states, in their commercial relations, or to some important question affecting the political position of one or other of the states, as, for instance, proposals for the interposing of good offices between the belligerents. "It would be," says Lord Stowell, "almost tantamount to preventing the residence of an ambassador in a neutral state if he were debarred from the means of communicating with his own." So much as to despatches, and when they are contraband: there now comes the question of the envoys. "Is it reasonable," as suggests Sir R. Phillimore, "that a man should be cantraband for carrying despatches, which are not contraband." There are, however, circumstances under which an envoy from a belligerent to a neutral state may be taken: but what are those circumstances? According to Vattel, he cannot be taken:—First, when he has been accepted by the neutral to whom he is accredited. Secondly, anywhere except within the territory of the belligerent, or where he is in possession. Certainly, therefore, although the confederate envoys had not been accepted by Her Majesty's Government, they could not be taken on board a neutral vessel on the high seas.

referring more particularly to "the duties which Great Britain, as a neutral, should have observed toward the United States," lays down principles for the most part inconsistent with, and repugnant to the principles of international law regarding the rights and duties of neutrals, as they have existed from the earliest times down to our day. It is insisted also that the "new rules" adopted at Washington were part and parcel of the old established international law, notwithstanding the reservation adopted in regard to them by the British Government, in the following unmistakeable terms :—

"It is true that it was thought essential by the British negociators to insert a declaration on the part of Her Majesty's Government, that they could not consent to those rules as a statement of the principles of international law which were in force at the time when the claims now under consideration arose. But the United States were then, and are still, of opinion, and they confidently think, that the Tribunal of Arbitration will agree with them, not only that those rules were then in force, but that there were also other rules of international law then in force not inconsistent with them, defining with still greater strictness the duties of a neutral in time of war."

The obvious intention of this statement is to impugn the candour and good faith of the British Government and its Commissioners in making the reservations referred to ; the words "*it was thought essential*" having an unmistakable significance. But apart from this it would lead to most momentous

results if the Tribunal of Arbitration were to give its sanction to the position that the "new rules," were indeed ancient rules of international law, and that beyond them "there were other rules" of ancient standing, "defining with still greater strictness the the duties of a neutral in time of war." Such sanction would, so far as the authority of the tribunal might be held to have weight, virtually establish the American code of neutral obligations not only as against the United Kingdom, but as against neutrals generally. At present, by the terms of the Treaty, the contracting parties only agree to observe the "new rules" as between themselves for the future, and "to bring them to the knowledge of other maritime powers, and to invite them to agree to them." The American "Case" would go further, and add to the invitation to agree to the "new rules" something like the moral pressure of authority, and that, as we shall see, in respect of a still larger and more stringent scheme of international law. This would involve most serious results to the comity of nations; it not being too much to say that the general adoption of the new code would render the position of neutrality more perilous than that of belligerency itself; if indeed it did not abolish neutrality altogether, in the sense of exemption from the operations and consequences of the war. Such conditions would be most onerous and costly to large maritime States, and might be fatal to the very existence of the smaller. It would, indeed, effect a recurrence to the old times of ruthless violence, when the term neutral was not even known, (it

is not as much as mentioned by Grotius), and when no State was held to be neutral if either belligerent thought proper to attack it.

The new scheme of international law, which the American "Case" formulates, for the occasion, "as against Great Britain," is set forth not under three, but twelve distinct heads, with an additional one elsewhere, making thirteen in all. We repeat that the British Government would have been perfectly justified, and would have exercised a sound discretion, if, in its Counter-case, it had declined to discuss this "Résumé of Principles," as it is called, contenting itself by referring to the special conditions laid down in the Treaty, and submitting to have the case tried by the "new rules," three in number, and by "such principles of international law, not inconsistent therewith, as the arbitrators shall determine to be applicable to the case." Unfortunately they have not so acted, but have been tempted to cite the American "Résumé," with occasional comments, in which, far from expressing the emphatic denunciation which so much groundless pretension called for, they sometimes make admissions which will, inevitably, whenever they are brought in question, lead to confusion and error. We will pass in review this "bakers' dozen" of propositions, making such remarks on them as may seem necessary.

The *first* of the propositions advanced by the American Goverment is as follows: — "That it is the duty of a neutral to preserve strict and impartial neutrality as to both belligerents

during hostilities." The British Government, in its Counter-case, "willingly assents to this proposition," as though it considered that it amounted to a truism,—and goes on, in an almost sarcastic humour, to remark, "no one, indeed, has yet been found to deny that it is the duty of a neutral power to be neutral," etc.

The *second* American proposition is: "That this (the first-named) obligation is independent of municipal law," upon which, the Counter-case remarks, "The British Government accepts this proposition also."

Is the British Government quite sure of its ground, in acquiescing, as it has done, in these two propositions? May there not possibly arise another case of mischief "growing out of" a too facile acceptance of a position put in language, doubtless very carefully prepared by the adversary? To arrive at a true understanding of the position, it is necessary to take the two propositions together, for the second depends upon the first. Be it remarked then, in the first place, that the word "preserve" is new, as applied to the position voluntarily assumed by a State in remaining neutral pending a war between other states,—"observe," being the word used for the purpose by all jurists. Martens, for instance, in his 'Précis des Droits des Gens,' says of a Sovereign so circumstanced, "Provided he *observes* that which an exact neutrality requires of him," etc.;—and again, "In order to *observe* a complete neutrality, he must abstain from all participation in expeditions of war." Again, our proclamation of neutrality declares the

"Royal determination to *maintain* a strict and impartial neutrality;" and "strictly charges and commands all our loving subjects to *observe* a strict neutrality." So, also, the proclamations of the Emperor of the French, and of the Queen of Spain, in the case of this very war, state that the Sovereign in his discretion has "resolved to maintain a strict neutrality." The difference between declaring the "Royal determination" or "resolve" to "maintain" neutrality, and it being "the duty" of the Sovereign to "preserve" neutrality is very plain;—the former implying an act of freewill, the latter the conforming to an obligation. Had the American proposition been to the effect, "that it is the duty of a neutral to *observe* strict and impartial neutrality," no one, indeed, could have disputed the palpable truism. But if that were the intended meaning of the proposition, what can have been the object of appending to it another, that "this obligation is independent of municipal law?" A State cannot limit its sovereign rights and functions by a municipal law, which is only applicable to its subjects. The British Counter-case admits that it is "the duty of a neutral power *to be* neutral," but that is not what the American proposition contemplates: it involves this, that a neutral power must "preserve" neutrality amongst its subjects, and that this "obligation" is independent of any powers it may have for the purpose under any existing municipal law.*

* It were perhaps needless to point out the difference in import of the two terms, as contained in the dictionaries. *To observe* is "to keep religiously," "to keep or adhere to in

It becomes necessary, when such pretensions as the above are put forward, as consistent with the common law of nations, to resist them upon the broad basis of principle. Although it is palpably true that a neutral State, in order to maintain its character of neutrality, is bound to observe a strict neutrality and impartiality between belligerents, there is nothing in the law of nations to prevent the subjects of such State in the exercise of their industry, to act on behalf of a belligerent, either by giving personal service, or by selling goods of every sort, including arms and munitions of war, and ships of war; the only condition under which he so acts being that, in all he does, he does it at his own risk and peril. The matter is thus explained by Vattel:—"It is for this reason that a belligerent notifies to neutral States its declaration of war, upon which the latter ordinarily warn their subjects to abstain from all dealing in contraband with the States which are at war, declaring to them that if they should be taken, their Sovereign would not protect them." And that contaband of war, so subject to confiscation by a belligerent, includes ships of war, is established by all acknowledged jurists, who might be cited by the score, and some extracts from whose writings fill six closely printed pages in the Appendix to the

practice," "to comply with," "to obey," "to follow." *To preserve* is "to save," "to defend from injury or destruction," "to protect," "to shield," "to guard." "To observe" applies to one's own conduct, "to preserve" may involve active interference with the conduct of others.

British Counter-case. From these, however, it may suffice our purpose to quote a couple. Judge Story, one of the most eminent jurists of the United States, in the case of the 'Santisima Trinidad,' spoke as follows:—"There is nothing in our law, or in the law of nations, that forbids our citizens from *sending armed vessels*, as well as munitions of war, *to foreign ports for sale*. It is a commercial adventure which no nation is bound to prohibit, and which only exposes the persons engaged in it to the penalty of confiscation." In England there is no trace of a contrary doctrine having ever been held. We read in Fortescue's Reports that, in 1721, a complaint having been made by the Government of Sweden that certain ships of war had been built in England, and sold to the Czar of Russia, "the judges were ordered to attend the House of Lords, and deliver their opinions on the question, whether the King of England had power to prohibit the building of ships of war, or of great force, for foreigners, and they answered that *the king had no power to prohibit the same*." But, indeed, if the pretension that a Government can, by common natural law, interfere to prevent all dealing in contraband of war between its subjects and a belligerent, what occasion would there be for municipal laws, of the nature of our Foreign Enlistment Act, at all? Why, when in 1793, the British Government complained to the United States of the building and equipping of privateers in the American ports, did President Washington see it necessary to obtain an Act of Congress to enable him to repress that practice?—

why, in 1838, did the United States, again, on the application of Great Britain, pass an Act, giving additional powers to the executive in this matter? —and why does the American Case set forth the extraordinary doctrine, which we shall come to presently, that a belligerent "has a right to ask to have the powers conferred upon the neutral by law increased, if found insufficient?"

The *third* American proposition is, "that a neutral is bound to enforce its municipal laws, and its executive proclamations, and that a belligerent has a right to ask it to do so; and also the right to ask to have the powers conferred upon the neutral by law increased, if found insufficient." The British Counter-case meets this preposterous position, in the first place, with a flippant remark, doubtless considered very smart, to the effect that, "the British Government does not dispute that a belligerent government *may, if it think fit* (not "has the right to"), ask for any of these things, but that the neutral power is not under any international obligation to comply with the request." In saying this, it is overlooked that having "a right to ask," pre-supposes a right to expect compliance; whereas, the whole pretension put forward in this article is utterly untenable, as being inconsistent with the Sovereign rights of the neutral state. Right or wrong, our municipal law, known as the "Foreign Enlistment Act," was the result of spontaneous action on the part of our Parliament, involving us in no responsibility to Foreign States. In it, the power was reserved to the Sovereign, with the advice of the Privy Council, to sus-

pend the operation of its provisions, and this power of suspension was actually employed in 1834, in order to carry out the stipulations of the Quadruple Treaty for interference in the war of succession in Spain.

It is contended in the American Case, that the result of the judicial proceedings against the 'Alexandra,' which was acquitted by the jury, on the ruling of the Judge, that the acts alleged against it did not come within the terms of the law, a decision afterwards confirmed on appeal, "emasculated the Foreign Enlistment Act;" and it is insisted that the conduct of our Government in not forthwith acceding to the demand of the American Government to alter the Act with a view of covering such cases, was "in violation of its obligations towards the United States," and an "abandonment *in advance*" of that "due diligence which is defined in the Treaty of Washington as one of the duties of a neutral." To say nothing of the coolness of the argument thus put forth, let us state that the facts—as too often occurs in American diplomacy—are not correctly stated. Lord Russell did not, though quite entitled to do so, meet this extraordinary requisition of the American Government with a simple refusal. He entered freely into a discussion of the subject, and stated that the Government, after consulting the officers of the crown, were willing to entertain the idea of making certain alterations in the Foreign Enlistment Act, but wished to ascertain first, whether the United States Government would be "willing to make similar alterations

in its own Foreign Enlistment Act?" To this Mr. Adams made the reply that the United States Government "did not know how their own law on this subject could be improved;"—and so the matter fell to the ground. It may be proper to state that the English Foreign Enlistment Act is much more comprehensive, and much more stringent than that of the United States. Mr. Bemis, an American counsel of acknowledged reputation, in a work on 'American Neutrality,' referred to in the Appendix of the British Counter-case, points out no less than ten particulars in which the United States is inferior to the British Law.

The *fourth* proposition is against "the fitting out, arming, etc.," ships for belligerents, which repeats part of the first of the three "new rules."

The *fifth* proposition is that a neutral is bound "to use due diligence to prevent the construction" of any vessel intended for warlike operations against a belligerent. The British Counter-case characterizes this as a "deviation or enlargement," indeed "a simple interpolation" upon the three rules consented to. It is indeed in our opinion an entirely new rule; and one utterly untenable. It is pretended to justify it upon an extract from what purports to be a translation into French of Heffter's 'International Law of Europe,' by Jules Bergson. In the original German, the author classes under the head of Contraband of War:—"Die freiwillige Zuführung von Kriegs- und Transport-shiffen,"—which means in English, "the voluntary transport or supplying of war and transport ships." The pre-

tended French version of this, cited in the American Case, runs, "la construction dans les ports neutres de vaisseaux de guerre ou de commerce, pour le compte de l'ennemi dès leur sortie,"—*Anglice:* "The construction, in neutral ports, of vessels of war or of commerce, for the use of the enemy from the time of their going out." This marvellous effort of amplification, or interpolation—not the only one by the way, in the American Case—requires no comment. For the rest, the difficulty of preventing "the construction" of a vessel, eventually intended for warlike purposes, must be very great, almost insurmountable, with any regard for the liberty of action of the subject. The preventing the sailing of such ship after "construction" is all that can properly be attempted, and moreover would answer all the purpose required. Nevertheless, the British Government, in the new Foreign Enlistment Act, of 1870, have yielded to the American demands on this point, and prohibited "construction."

The *sixth* proposition is an adaptation of the second portion of the first of the three "new rules" included in the Treaty, with a tendency of serious and dangerous import, which we apprehend was, though known to the American Commissioners, not contemplated by their British colleagues when that rule was accepted. The rule in question demands due diligence to prevent the "fitting out," etc., of ships for warlike purposes, and also "to prevent the departure" of *any* vessel "intended to cruise or carry on war as above —such vessel having been specially adapted, in whole or in part, within such jurisdiction." The first

impression upon reading this rule, in the natural collation of the parts, would be that the "preventing" of the departure referred to the vessels mentioned in the first part of the rule; in other words, that the neutral was to be bound to prevent the "fitting out," of ships, and also their "departure," supposing them to have been fitted out in spite of "due diligence," the responsibility ending with the first "departure" should it, in spite of "due diligence," be effected. But by making a separate and substantive law, as in Proposition 6, "that a neutral is bound to use like diligence to prevent the departure," etc., of any vessel, etc., "such vessel having been specially adapted, in whole or in part, within its jurisdiction, to warlike use," the injunction appears to be made applicable to vessels of war, under the flag of a belligerent, which may at any time have been "specially adapted, in whole or in part, within the jurisdiction," thus including vessels, which having escaped surreptitiously in the first instance, had afterwards been duly invested with the character and functions of a ship of war, and included in the regular maritime force of a belligerent. This would be in direct violation of all established rules on the subject, which recognize the exterritoriality of the ships of war of a belligerent, when duly invested with its flag and under proper command, whatever the antecedents of the vessel. To attempt to "prevent the departure" of such a vessel,—or in other words, to capture it, would involve an act of war, which no neutral should be called upon to commit, and which indeed would at once destroy its neutrality.

The position so imperiously laid down, however, will no doubt be turned to account against us, when the American Case is argued before the Tribunal of Arbitration. This view of the case is strengthened by reference to Propositions 10 and 12, which are cited below.

Propositions 7 and 8 are against suffering neutral ports to be made use of as a base of operations, or for obtaining military supplies, etc.

Proposition 9 is that where the neutral "fails to use all the means in its power" to prevent breaches of neutrality above described, it "should make compensation for the injury resulting therefrom;" which the British Counter case will not admit as it stands; consenting to it, however, so far as regards "an appreciable injury, directly caused by a violatioa of a clearly ascertained international duty."

Proposition 10 declares "that this obligation is not discharged or arrested by the change of the offending vessel into a public man of war."

Proposition 11 is that this obligation is not discharged by a fraudulent attempt of the offending vessel to evade the provisions of a local municipal law.

Proposition 12 (which as has been stated), together with No. 10, is of peculiar significance in connection with Proposition 6, is as follows:—"That the offence will not be deposited so as to release the liability of the neutral even by the entry of the offending vessel in a port of a belligerent, and there becoming a man-of-war, if any part of the original fraud continues to hang about the vessel."

The American Case enters into a long and not very lucid disquisition as to what should be considered as constituting the "due diligence" applicable to these matters, which the British Government in its Counter-case, after an attempt at discussion, sums up with the discouraging conclusion that according to the American theories, if taken literally, "no Government can be held to have done its duty, which has not been completely successful." But the onerousness and hardship of the position is brought to the highest point of tension when we find the American Government, in another part of their Case, which appears to have been overlooked by the compilers of our Counter-case, proceeding to insist, "with great confidence," that in respect of matters of complaint to be brought forward by them before the Tribunal of Arbitration, the latter will "assume that the burthen of proof will be upon Great Britain to establish that they could not be prevented;"—certainly a "new rule" of practice in judicial procedure, as startling as any of the new doctrines of principle so confidently laid down in this astounding production.

Such are the arbitrarily-instituted principles of international law upon which the Government of the United States seeks to enforce against us heavy claims for damages "direct" and "indirect" occasioned during the late civil war. We regret to observe that the extraordinary pretensions thus put forward have engaged the attention, and excited the alarm of the Government and of the country, more on account of the enormous amount of the payments

possibly claimable under them, than of the principles involved in them. Let us therefore consider for an instant what would be a reasonable monetary outcome of the matter on the American's own showing.

The American Case cites as a precedent for giving compensation in the event of breaches of neutrality such as are now in question, the conduct of the United States on the occasion of the depredations committed by the French privateers in 1793. But it should be recollected that there were peculiarities in the circumstances of the case, and in the relative positions of the parties in those days, which are not exactly paralleled at present. As the American Case states it, "The capital was at Philadelphia, several hundred miles from Charleston," where the practices complained of took place; added to which "the Government of the United States was in its early infancy," and "it had not been tested whether the powers confided to it would prove sufficient for any emergency that might arise in its Foreign relations. It had neither navy, nor force that could be converted into one, and no army on the sea-coast, and it was obliged to rely upon, and did actually call out, the irregular militia of the States, to enforce its orders." Thus circumstanced, wanting the essential conditions of a civilized state, it was a matter of moral obligation as well as a matter of necessity, that the United States should yield to our demand for a municipal law to prohibit practices through which other nations suffered intolerable grievances and wrongs, and to make compensation under certain circumstances.

In effect, says the Case, it was "agreed between the two Governments that in cases where restitution of the prizes should be impossible, the amount of the losses should be ascertained by a method similar to that provided by the Treaty of Washington, and that a money payment should be made by the United States to Great Britain, in lieu of restitution."

It will be remarked that herein there is nothing said of consequential damages; merely restitution, or a money equivalent. Moreover, even this limited compensation provided for by the Treaty of 1794, was administered on very different principles to those to be made applicable at Geneva. First, the Treaty was not retrospective, or only to a limited extent, the 5th June, 1793, being arbitrarily fixed, earlier than which date no complaint should originate; although it was well established that the fitting out of the obnoxious privateers had commenced two months previously. Secondly, it was not applicable except in cases where the prizes had been brought into an American port—the owners of vessels which the captors had destroyed at sea not being entitled to compensation. Thirdly, when the prize had been brought into an American port, no compensation was to be awarded unless proceedings had been instituted and efficiently carried to judgment in a district Court of Admiralty. The British Countercase too clearly shows, that with all these restrictions and drawbacks, the principle of compensation adopted by the American Government in 1794, and so ostentatiously referred

to in the American Case, was very little, if at all, operative.

Upon the whole, it may be said of the new code of International law, propounded by the United States, as a means of sustaining certain pecuniary demands, under what are termed the "Alabama Claims," that, however exorbitant the possible amount of those claims may turn out to be, the money sacrifice involved in them sinks into insignificance, when compared with the inconveniences, and damage which must result to communities from the adoption of the code itself. The sacrifice occasioned by the claims themselves is capable of being measured in figures, which once disposed of the affair is at an end; but the "new rules" of neutrality pretended to be forced upon the world, will involve all neutral states in responsibilities attended by dangers and losses incalculable to the end of time.

SUPPLEMENTAL NEGOCIATIONS, TO "SAVE THE TREATY."

THE frantic negociations which have taken place since the discovery of the "misunderstanding" between the two Governments, on the subject of the "indirect losses" under the "Alabama Claims," are certainly entitled to the distinction of being without precedent in the whole history of diplomacy. Whatever condemnation may be due to the negociators of the Treaty for their careless and slovenly wording of its terms in this matter, the revelations which have been made since, both by the executive, and by two at least of the High Commissioners (the Marquis of Ripon has judiciously hugged himself in a compa-

rative reserve) surpassing in weakness and blundering all that had gone before. And what is well worthy of remark, looking at the whole story of the affair, is this:—that but for the publication, contrary to usual etiquette, by the United States of their "Case," at the time of its presentation, it is not at all unlikely that the agitation to which it has given rise would never have taken place; and that our incomparable Ministers would have slumbered in agreeable unconsciousness over the matter, until almost too late to meet the danger which it threatened.

Mr. Gladstone has admitted that although, as he had since ascertained, a copy of the Case had been sent to him, it did not reach his hands, and that he never took the trouble of inquiring for a document so important, which he knew was to be looked for at a certain date.

Earl Granville, on the other hand, though he received the document, in ordinary course together with other official papers, being at the time suffering from a fashionable indisposition, did not trouble himself to open it, naturally taking it for granted that the "Case" was "all right" and a mere matter of detail and routine, in accordance with the so clearly defined provisions of the Treaty. Aroused at length by the clamour from without, his lordship appears to have incontinently glanced over the ugly document, the contents of which, as he humourously described it in the House of Lords, gave rise to feelings "which were anything but a panacea for the gout!" Then came that injudicious and unprecedented reference to the subject in the speech from

the throne, and the "friendly communication," which it was complacently suggested would set the little difficulty right, except that its effect was thwarted by Mr. Gladstone's out-spoken denunciation, which in truth left open no chance for a conciliatory result.

Throughout the long, tedious, and depressing correspondence which has since taken place, in the hope of arriving at terms of accommodation before the meeting of the Tribunal of Arbitration at Geneva, on the 15th June, it is but too apparent, that whilst the United States Government have been firm in insisting upon the competency of the Tribunal of Arbitration to decide as to the admissibility, or the reverse, of the principle upon which the Indirect Claims are based, they do not entertain much expectation of that question being decided in the affirmative, and are quite prepared, rather than the treaty should fail, to abandon any claims which might accrue, in case such principle should be affirmed. They insist, any way, that they require to have the principle decided, not so much for its bearings upon what is past, as upon what may occur in future, should they happen to be neutrals, when Great Britain is engaged in a war. With these professed views, they invited a proposal from the British Government, which the President would undertake to submit for the opinion of the Senate—not a very cordial or conciliating manner of meeting the matter, it is true, nor in accordance with the usual course of negociations between friendly States, but, still, perhaps, the best we could expect, and the only one which, considering the responsibility attached to

his position, the President thought it prudent to assent to. The British Government, however, having consented to the *modus operandi* prescribed to them, the only question remaining was as to the terms of the proposition to be submitted by them; and herein they have been all through hopelessly at variance with the other side. They are not content to avoid the enormous damages possible under the indirect claims, they want to negative the very principle upon which these claims are based; or, at least, to have the claims withdrawn bodily from the case, by an instruction, jointly presented to the Arbitration Tribunal to that effect. This proposition, which Earl Granville has endeavoured to render palatable, in all sorts of shapes and forms, has been persistently resisted; and over and over again in nearly the same words. "All the propositions made by the British Government," says Mr. Fish, in one of his recent telegrams, "involve, covertly, probably without design, what this Government cannot agree to—namely, the withdrawal from the province of the Tribunal of what we believe to be entirely within their province;" adding, "the President cannot, and will not, withdraw any part of what has been submitted, within his construction of the intent and spirit of the Treaty." And General Schenck, in one of his telegrams to Washington, suggests, as one of the reasons for the pertinacious conduct of our Government in this matter, "*an unwillingness on the part of Mr. Gladstone, to seem to retract the extreme position he took at the beginning, as to the interpretation of the Treaty.*" It would be a

national disaster, and a blot on the page of history, if a few hasty and ill-considered expressions, falling from an individual in the position of Minister of State, should be allowed to imperil the friendly relations between two powerful and leading States: but it would seem not unlikely to prove the case.

At length, on the 10th May, Lord Granville took occasion to flatter himself that he had got clear of the difficulty, and achieved a master stroke of policy, in a form of declaration, which he forwarded through Sir Edward Thornton, for submission to the President at Washington. This document, which is entitled a "Supplemental Article," and is intended to be embodied as a "fourth Rule" established by the Treaty, and which is rather confusedly worded, and strangely inverted in construction, may be summarized as follows:—After reciting the objections of Her Majesty's Government to the indirect claims, on the ground, firstly, "that they were not included in the Treaty of Washington," and secondly, that they "should not be admitted in principle as growing out, etc.," of the acts of the escaped cruisers, and that the said government "has also declared that the principles involved in the second of the contentions hereinbefore set forth will guide their conduct in future;" and that "the President of the United States, while adhering to his contention that the said claims were included in the Treaty, adopts for the future the principle contained in the second of the said contentions" as operative between the two countries—it is declared that "in consideration thereof, the President of the

United States, by and with the advice of the Senate thereof, consents that he will make no claim on the part of the United States in respect of indirect losses as aforesaid before the Tribunal of Arbitration at Geneva."

Carefully worded as this document obviously has been, there are two points which cannot fail to be remarked in it, as tending to uncertainty of action. In the first place, though the President is made to consent that "he will make no claim in respect of indirect damages aforesaid," there is no mention of claims already made, nor even of "the Case" in which they are made,—and no withdrawal of the claims so made therein. Secondly, there is no stipulation to bring the agreement to the knowledge of the Arbitration Tribunal, which will thus remain "seized" of the claims as stated in that Case, with the necessity of coming to a decision upon them; which is the very thing the British Government wishes to avoid. Indeed it appears that this is the deliberate intention of the United States Government; what they propose to consent to, under the operation of this new Article, being to abstain from claiming any pecuniary damages which might possibly be awarded to them for indirect losses, but not to obviate the making of the award.

But this Supplementary Article is not yet adopted. The Senate, to whom the President referred it for their "advice beforehand," have voted in approval of his entering into negociations upon the basis of it, after making some "verbal alterations" in the article itself, with a view of rendering it more palatable

to the American people. What those verbal alterations amounted to, was for a long time kept secret, but it was generally believed that they were objected to by the British Government, as tending not to withdraw the indirect claims with sufficient distinctness; and also as introducing some general principle of international obligations which might be highly prejudicial to this country on any future occasion of belligerency. In this awkward predicament negociations were renewed with greater activity than ever, by means of the Atlantic Cable; the "night bells" of the Foreign Office, and at the American Embassy were in constant agitation; and the outer world looked on in mute suspense, whilst Diplomacy was straining every resource "to save the Treaty."*

Meantime this question began to arise in the minds of practical men,—"Was the Treaty worth saving, at the expense of all this fuss and fret, and humiliation?" To judge of this requires a consideration of its other important provisions, which have hitherto been too much overlooked.

British Claims—The Fenian Raids, etc.

Lord Granville, in his Instructions to the British Commissioners, declared in emphatic language that "throughout the negociations on the 'Alabama, Shenandoah,' etc., claims, Her Majesty's Govern-

* We shall note the progress and result of these negociations in our concluding observations, at the end of the work.

ment have always urged that any satisfactory settlement of those claims *must* be accompanied by a simultaneous settlement of the claims of British subjects arising out of the civil war, and provision was made for this purpose in the Claims Convention." His Lordship suggested the establishment of a mixed commission to adjudicate upon these claims; and especially recommended to notice "a claim on the part of the people of the Dominion of Canada for losses of life and property, and expenditure, occasioned by the filibustering raids on the Canadian frontier, carried on from the territory of the United States in the years 1866 and 1870." Thus instructed, the British Commissioners, on the 26th April, after previous unsuccessful attempts to be heard on the subject, announced "that they were instructed to present these claims (those in regard to the Fenian raids), and to state that they were regarded by Her Majesty's Government as coming within the class of subjects indicated by Sir Edward Thornton in his letter of January 26, as subjects for the consideration of the Joint High Commission." The American Commissioners replied "that they were instructed to say that the Government of the United States did not regard these claims as coming within the class of subjects referred to;" that they were "without any authority to consider them," and "therefore declined to do so." Upon this the British Commissioners referred home for instructions, in conformity with which they, on the 3rd May, expressed "the regret" of the British Govern-

ment that the American Commissioners were "without authority" in this matter, and "inquired whether that was still the case." The American Commissioners declined to "vary the reply formerly given to this proposal," and the British Commissioners thereupon incontinently stated "that under these circumstances they would not urge further" in the matter, "and that they had the less difficulty in doing so [query *not* doing so?], as a portion of the claims were of a constructive and inferential character;" words which, not very intelligible in themselves, would seem to imply an admission on the part of the British Government that they had put forward a claim, which in their own minds they knew to be in great part weak and untenable. But whatever our opinion of the disingenuous and undignified conduct of the Ministry in this affair, what are we to consider of the statement volunteered by Mr. Montague Bernard, the Professor of International Law, at Oxford, and one of the High Commissioners from this country, in the course of a lecture recently delivered before a large audience in the above-mentioned University, which shows that he was diametrically opposed to the instructions under which he acted in that capacity? "I think otherwise, however," said this learned gentleman, "because I long ago formed an opinion, that although these attacks on the people of a friendly State were such as amply to justify grave remonstrance and complaint, and although, according to the conception of international liabilities contended for by the United States, they might have supported

a claim for pecuniary compensation, they would scarcely, as the correspondence stood, support such a claim according to the sounder principles maintained by Great Britain." "This, however," he adds, and we are grateful for the admission, "is my private and individual opinion only." We will not stop to inquire of this eminent jurist what he considers would be the importance of being amply justified in making "grave remonstrance and complaint" against the United States, if we were not also justified in seeking redress, pecuniary or other, for the wrong committed. We will simply state, that according to the acknowledged principles of international law, a state is bound to take measures to prevent its territories from being made the base of hostile operations against its neighbours; and that, although the Fenian raids against Canada were not in the nature of belligerency, the United States, in this case, were equally bound to adopt measures of police to prevent the outrage. However, these claims were, by a shameful pusillanimity, abandoned; and, accordingly, in compliance with the imperious resolve of the American Commissioners, when a mixed Commission was appointed by the Treaty to adjudicate upon British claims, it was provided that its operations should apply only to claims arising between the dates of the 13th April, 1861, and the 9th April, 1865, by which all account of the Fenian raids was effectually excluded.

Another class of claims put forward on behalf of British subjects was that on account of what were called the "Cotton Bonds," being bonds issued on

security of cotton to be grown in the Confederate Provinces, and intended to be forwarded for sale to this country. The circumstances attending the presentation of these claims, and what took place in regard to them, are somewhat curious; and we believe we have the facts from an authentic source. It appears that after the signing of the Treaty, Mr. Morgan, the Chairman of the Committee of the holders of the bonds in question, wrote to Lord Granville, asking whether they were included, as for claim, under the provisions of the Treaty. He received a reply, simply referring him to the Treaty, upon which he made renewed application, stating that his object was to obtain the opinion of the Foreign Office on the subject. In the result of some further correspondence, Mr. Morgan was told to send the claims to Mr. Howard, the agent of the Government, at Washington, who laid them before the Commission.

On the 9th November General Schenck, the American Minister in London, received a telegram from Mr. Fish instructing him to obtain an immediate interview with Lord Granville, and demand the withdrawal of these claims, as being both unconstitutional in their nature, and indirect. Lord Granville being at Walmer, indisposed, referred the Minister to Lord Ripon, with whom he had three or four interviews, but from whom he did not succeed in obtaining a decided answer; and on the 15th December these claims were presented, and adjudicated upon by the Commission at Washington, in an adverse sense. It is said that the United States

Government looked upon this proceeding as an additional argument in support of their right to have their indirect claims laid before the Tribunal of Arbitration, in spite of the remonstrances of the British Government. But it is obvious that the two cases do not coincide in essential particulars; the matters referred to the Geneva Arbitration being, however clumsily so, defined, whilst those referred to the mixed Commission were general.

The Fisheries—The Navigation of the River St. Lawrence, etc.

These two questions it is convenient to consider together.

In regard to the matter of the Fisheries it is necessary to go back a little to the history of previous transactions. By a convention between the two Governments, dated Oct. 20, 1818, after naming certain districts in Newfoundland, and the coast of Labrador where there was to be a common right of fishing, till, and in respect of, any part being settled, it was stipulated that the United States "renounced for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, in or within three marine miles of any of the coasts, bays, creeks, or harbours of His British Majesty's dominion not included within the above mentioned limits," provided, however, that the American fishermen "shall be at liberty to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood and of obtaining water, and for no

other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any way whatever abusing the privileges hereby reserved to them." This convention was operative for ten years, and was renewed in perpetuity in 1827, with power reserved on either side to terminate it after the 20th Oct., 1828, on giving one month's notice.

On the 5th June, 1854, a "Reciprocity Treaty," in matters relating to fisheries, commerce, and navigation, was signed at Washington, which was of enlarging import, upon principles of mutuality.

Article I of this Treaty threw open to the United States "the liberty to take fish of any kind, except shell fish, on the sea coasts and shores, and in the bays, harbours, and creeks of Canada, New Brunswick, Nova Scotia, Prince Edward's Island, and the several islands thereunto adjacent, without being restricted to any distance from the shore, with permission to land for the purposes of drying nets and curing fish," but the above not to apply to salmon, shad, and other river fish. Article II conferred upon British subjects the right, in common with citizens of the United States, to take fish (subject to similar exceptions) on the eastern coasts and shores of the United States, its bays, etc. Article III stipulated that certain articles named, "being the growth and produce of the aforesaid British colonies and of the United States, shall be admitted into each country respectively free of duty." Article IV provided that the United States should

have the right to navigate the River St. Lawrence and the canals of Canada, and as a communication between the great lakes and the ocean, as freely, and at the same rates of toll as British subjects. A proviso retained to Great Britain the right of suspending this privilege on giving due notice to that effect; and it was further stipulated that in case Great Britain should so suspend this privilege, the United States should have the right to suspend the stipulations of Article III establishing free trade in certain articles, so far as Canada was affected thereby. It was further provided that British subjects should have the right to navigate Lake Michigan so long as the free navigation of the St. Lawrence should continue; the United States undertaking to urge upon the States Governments to secure to British subjects the use of the States' canals on terms of equality with inhabitants of the United States; no export or other duty to be charged on lumber or timber cut in the State of Maine, on the river St. John and its tributaries, and floated to the sea, when the same was shipped to the United States from New Brunswick. By Article V it was provided that the Treaty should receive parliamentary sanction, and remain in force for ten years, subject afterwards to twelve months' notice on either side. President General Pierce in his message to Congress, in the year following its signature, spoke of this treaty in highly congratulatory terms, describing it as one which conferred "privileges of the highest importance and value upon the United States." It will be remarked that this Treaty distinctly re-

cognizes the exclusive right of Great Britain to the navigation of the St. Lawrence, inasmuch as it reserves to it the power of repudiating the stipulated arrangement under which it was to be made open to the United States. It will be remarked, also, that the opening of the navigation of this river to the subjects of the United States was acknowledged to be equivalent to the opening of Lake Michigan to British subjects, in addition to certain very important privileges of free trade in certain articles between the two countries.

In face of such facts, what are we to consider of certain statements which appear in the protocols of the Washington High Commission on this subject—protocols which can only serve to mislead public opinion, generally too ignorant of the antecedents of the case? What, for instance, are we to think of British Commissioners who "stated that they regarded the concession of the navigation of Lake Michigan as an equivalent for the concession of the navigation of the St. Lawrence." They added, however, that, as to the canals, "the concession of the privilege to navigate them in their present condition, on terms of equality with British subjects, was a much greater concession than the corresponding one of the canals afforded by the United States." They also suggested that "the enlargement of the Canadian canals, which would be necessary to meet the requirements of the traffic of the citizens of the United States, would involve considerable outlay, and asked what equivalent the American Commissioners proposed to give for the surrender of the right

to control the tolls for the use of the canals, either in their present state or after enlargement." The American Commissioners gave an evasive reply to these appeals, except that they insisted upon the liberality of the arrangement which they proposed, and, with respect to the St. Lawrence and Lake Michigan, declared "that in their opinion, the citizens of the United States could now justly claim to navigate the river St. Lawrence in its natural state, ascending and descending from the 45th parallel of north latitude," and that "they would not concede that the navigation of Lake Michigan should be given or taken as an equivalent for that right."

To return, however, to the plain history of the case: the Reciprocity Treaty was repudiated some years ago by the Government of the United States; and in consequence of that proceeding, which immediately revived the Convention of 1818, certain disputes with regard to the rights of American fishermen under the latter act were revived.

The fishermen of the United States were deprived of rights of fishing which they had long enjoyed, and great animosities, and hardships resulted from the seizure of their boats for illegal fishing contrary to the provisions of 1818. This state of things was partially provided against by the issue of licenses; a temporary expedient which could not go on in continuity, and which it was one of the objects of the late negociation to obviate entirely for the future. The British Government, in their instructions to their High Commissioners, refer to certain "differences of interpretation" which have been put upon the Con-

vention of 1818, by the two Governments, in a manner which, as we must observe at the outset, betrays an unhappy weakness, and an almost wilful encouragement of doubts, where, to the most ordinary intelligence, no scintilla of a doubt could possibly have been apparent. Certainly, if any doubts of the kind described by Lord Granville, in his instructions, could have been *bonâ fide* entertained by him, it argued little for the sagacity which pervades the department over which he presides, besides casting an unmerited rebuke upon his predecessors in office, whose work was thus subjected to detraction. The chief questions in dispute, according to Lord Granville, are two in number, and we will take them one at a time. First, it is questioned, as a matter of interpretation, "whether the expression 'three marine miles of any of the coasts, bays, creeks, or harbours,' should be taken to mean a limit of three miles from the coast line, or a limit of three miles from a line drawn from headland to headland." Before endeavouring to solve this ominous enigma, let us observe, by the way, that whoever drafted these instructions made a not unimportant omission in leaving out the word "within" at the commencement of the passage quoted. "*Within* three marine miles of," is an intelligible phrase, but the omission of the first word leaves the passage uncertain, and, we may add, un-English. And with respect to the passage, as completed, we apprehend that Mr. M. Bernard, if he had been applied to, could have had little difficulty in clearing away all doubts from the minds of his colleagues, by a reference to the well-known principles as to the territoriality

of coast frontiers, including bays and straits, as laid down by all acknowledged jurists, and which would clearly resolve the "difference of interpretation" in this matter in favour of Great Britain. But the *rationale* of this matter is clearly ascertainable from the very wording of the passage. The concurrence of the words "bays, creeks, and harbours," puts those three descriptions of coast formation on an equal footing; and it cannot be denied that each commences at the points of the coast where they respectively open upon the sea, and that all water within these points is part of the "bay, creek, or harbour," as the case may be; and that, as a consequence, not to be "within three miles" of such "bay, creek, or harbour," you must be beyond three miles of a straight line drawn between the two heads, or points of land, where the indentation forming the bay, creek, or harbour, commences. But further,—if there could be any hesitation to admit this theory upon the face of the 1818 Convention itself, the Reciprocity Treaty of 1854, modifying that Convention, would infallibly remove it. By this Treaty the right of fishing, mutually conceded, was on the sea-coasts and shores and *in* the bays, harbours, and creeks," without any restriction as to the distance from shore—in other words, within the strict territorial domain of each contracting party respectively. The other question of doubt, or "difference of interpretation," admitted by Lord Granville, as to the Convention of 1818, is, when you come to look at it, so visionary, so absurd, that one can hardly conceive a public man of any reputation or position acknowledging its exist-

ence. It is thus stated :—"Whether the proviso that the American fishermen shall be permitted to enter such bays or harbours, for the purpose of shelter, and of repairing damages therein, of purchasing wood and of obtaining water, and *for no other purpose whatever,'* is intended to exclude American vessels from coming inshore, to traffic, transship fish, purchase stores, hire seamen, etc." One would have thought that the words "and for no other purpose whatever," would have been sufficient to exclude all but the particular purposes specified as permitted, and that to speak further in the matter would be an impertinent waste of time. But we will answer it by again referring to the terms of the "Reciprocity Treaty," which permit the entrance into "bays, harbours, and creeks," for the purpose of fishing, and the landing on the shores, for the purpose of "drying nets and curing fish,"—being a specific and limited qualification of the 1818 Convention,—which latter being now recurred to, could not by any possibility be construed to sanction the larger privilege "to traffic, transship fish, purchase stores, hire seamen, etc," recognized by his lordship as possibly coming within a fair interpretation of its provisions.

In the matter of the Fisheries, the British Commissioners proposed, as a basis of arrangement, that the Reciprocity Treaty of 1854 "should be restored in principle." The American Commissioners peremptorily "declined" this proposal, and, at a subsequent sitting, made a counter proposition for a money payment, naming one million dollars, for the joint use of these fisheries in perpetuity; an offer which

the British Commissioners, on referring to their Government, were instructed to say "was regarded as inadequate" by the latter. The American Commissioners then "withdrew the proposal they had previously made," and afterwards laid down other terms, which the British Commissioners "received instructions to accept," and which were included in the Treaty accordingly. It is therein provided, that the fishermen of the United States, in addition to the rights under the Convention of 1818 shall have the liberty to fish on the coasts, and in the bays, harbours, and creeks of Nova Scotia, Quebec, New Brunswick, and Prince Edward's Island and the islands adjacent; and to land upon them, as well as upon the Magdalen Islands, for the purpose of drying nets and curing fish, subject to local rights of private property; British fishermen to have similar right of fishing and landing on the eastern coasts and shores of the United States, as far as the 39th parallel (instead of the 36th, as in the Reciprocity Treaty) of northern latitude. It is also provided reciprocally for the import, with certain restrictions, of fish and fish-oil free of duty. The Treaty records that, in making this arrangement, Great Britain asserts, but the United States deny, that the preponderance of advantage is in favour of the latter; and that it is to be left to a mixed commission, with a friendly power as umpire, to decide whether any, and if so, what amount of compensation the United States ought to pay for it. There can be no question that the sacrifice our colonial fishermen are called upon to make is a very serious one, not only in

respect of the actual value of the business in which the fishermen of the States are to be admitted to participate, but as to that feeling for territorial rights, which is so dear to all free peoples. It is difficult to imagine that any pecuniary payment can compensate for it.

The Reciprocity Treaty, it will be recollected, conceded the right of navigation of the River St. Lawrence, in exchange for that of Lake Michigan, in consideration of an important provision for establishing free trade in certain articles. The inhabitants of our colonies were very anxious to have these commercial facilities renewed, as an equivalent for a valuable concession; but the United States would not listen to any negociation on the basis of the Reciprocity Treaty. As it is, the new Treaty declares the right of navigation of the St. Lawrence from the 45th parallel, and of the Yukon, the Porcupine, and the Stickno, to be free and open to both countries, and the British Government undertakes to recommend to the Government of Canada to allow the equal use of the Welland, St. Lawrence, and other canals in the dominion, while the same privilege is to be extended to British subjects on Lake Michigan, and on the St. Clair Straits Canal in the United States. The free transit in bond, to and fro, of merchandize, both in the British possessions and in the United States, is stipulated, and the provisional export duty on American timber in the River St. John, when intended for shipment from New Brunswick, is abolished.

The rights of fishing are limited to a term of ten years, subject to two years' notice. The right of

navigation of the St. Lawrence and other rivers named, is to exist "for ever;" but the right of navigation of Lake Michigan, conceded to us, is restricted to ten years, subject to two years' notice thereafter.

Of course all these provisions were agreed upon subject to ratification by the Senate of the United States, and by the Government of Great Britain, as well as by the Canadian Parliament, and the Legislature of Prince Edward's Island.

The inconveniencies and anomalies attending a policy of concession, in derogation of the established principles of national right, are strikingly illustrated in all the recent proceedings in reference to, and consequent upon these arrangements—the hardship of the case being aggravated by the fact, too evidently manifest, that in these transactions the interests of the colonies have been sacrificed to those of the mother country. The recently published correspondence between the Colonial Office and the Ministers of the Canadian Dominion establishes the fact of the unqualified disapproval, and deep discontent of the bulk of the Canadian population at the manner in which their wrongs have been disregarded, and their territorial rights invaded, by consent of the Home Government, with the one purpose in view, by the latter, of obtaining a settlement, of some kind or other, of long-standing and embarrassing disputes with the United States. The complaints of the Canadians are under two heads:—1st. In "that the United States are permitted to refuse to make any sort of compensation for the Fenian raids, justly chargeable to their culpable neglect of international duties, or even

to give any assurance of an intention to prevent a repetition of such outrages in future." And secondly, "The barter of the rights of fishing on their own waters, for a period of ten years, in consideration of a possible money payment to be afterwards estimated, in diametrical opposition to their oft expressed desire."

The opposition on these two grounds was so formidable, that, as the correspondence informs us, the Canadian Ministers thought it hopeless to submit the Treaty for the ratification of the Canadian Parliament, unless something was offered in the way of composition, or equivalent for the sacrifices to be made. And this brings us to, perhaps, the most humiliating feature in the whole of this wretched business. The Canadian people were to be bribed to surrender their rights; and the bribe offered them turns out to be in the shape of a guarrantee of a loan of £2,500,000 towards the cost of constructing a railway to the Pacific, and enlarging the St. Lawrence canals, towards which the American Commissioners refused to contribute. We say that this bribe has been offered by the Home Government, and that it has been accepted in principle by our colonial brethren. But there are certain conditions of uncertainty still attaching to the bargain, of a sort inseparable from all irregular transactions, in which the executive pretends to exceed its legitimate functions; or, at any rate, to anticipate and pre-suppose the future sanction of Parliament, to arrangements upon which it has not been consulted, but which cannot be carried out

without its consent. It is demanded that Canada shall make the first move, by accepting the Treaty; which done, the Home Government undertake to recommend Parliament to give them the necessary authority to carry out the contemplated guarantee. But suppose the House of Commons should hesitate, as they did in the case of the Turkish loan in 1855, to pass the necessary vote? We should, of course, hear from perplexed Ministers the usual appeals on the ground of national faith, and so forth; and eventually, in all probability, though with reluctance, the House would find itself compelled to grant a discreditable bribe, as the price of securing an ignoble and mischievous Treaty.

By the latest accounts from Canada, it appears that, after a persuasive speech from Sir John Macdonald, the Attorney General, and one of the Joint High Commissioners, in which he urged the humiliating suggestion that the Canadian colonies were the cause of great anxiety and weakness to the mother country, and that some concession should be made to lighten the burthen, the Bill was passed for giving effect to the Treaty of Washington, so far as the Dominion is concerned, on the 17th May. Should the Treaty fail in other points, however, this legislative action will, we presume, prove of none effect.

The North-Western Boundary Question.

The question of fixing the water line, forming part of the North-Western Boundary between the United States and the British Colonies, although it has been almost overlooked in the midst of more ex-

citing contentions, was one of the most important,—perhaps, as regards the Sovereign interests at stake, the most important of all the matters referred for negociation to the Joint High Commission. The defence of the national territory has in all ages been the object of the most jealous solicitude with independent peoples; and the Scriptures denounce a curse against him who removeth his neighbour's landmark. There is no matter upon which the Sovereign of a state should be more jealously solicitious than in defending the boundaries, and protecting the property and homes of his subjects. It is to be mentioned with regret, however, that as regards the British Colonies in North America the Government has shown itself, during nearly a century, very neglectful, or very inadequate to the occasion in this essential particular; whilst the United States have displayed an energy and a determination to maintain against us to the utmost limits, their territorial boundaries. We are sorry to find Professor Bernard, one of the British High Commissioners, speaking, in the course of his recent lecture at Oxford, in a flippant and unseemly tone upon this subject, which shows that he was very indifferently aware of the sacred nature of the trust reposed in him in this matter on his recent diplomatic mission. He remarks: "It must be said I think of the Americans that they have a passion for territory. The acquisition of it has always been pleasing to them, and vast as is the extent of their actual undisputed dominion, the cession of a square mile of land to which the Republic has been believed to have any claim is always pain-

ful." Considering the grand uses to which each acquisition of land has been put by the United States, in the spread and multiplication of industrious populations, the diffusion of civilization, and the accumulation of material wealth, we are not to be surprised at this tendency and purpose. But there is this consideration, besides, that in defending every square mile of territory to which they consider that they can make claim, they also defend the persons of those who occupy it, and so increase the number of the citizens of the great Federation. Great Britain, on the other hand, too little regardful of the value of the lands themselves, and much less so of what was due to her enterprizing sons who had occupied them, with every surrender of territory has severed from her rule and protection worthy men, who would gladly have retained their connection with the mother country.

It is almost impossible to realize the position in regard to the North-Western Boundary Case, now the immediate subject in dispute, and the conduct of the negociations in connection with it, without taking a glance at the earlier question of the Maine Boundary, which was the subject of a discreditable Treaty some thirty years ago, but of which an off-shoot yet remains to be settled, as we shall presently see. This little affair of the Maine Boundary, dates back to the year 1783, when it was stipulated in the Treaty of Versailles, as respects a portion of the boundary line between the mother country and the newly enfranchised States, that it should run eastward from the Rocky Mountains by a line to be drawn along the middle of the River St.

Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to certain highlands which divide the rivers falling into the Atlantic from those falling into the River St. Lawrence. No steps were taken effectually to lay down this theoretical boundary, until the attention of the two Governments was called to the subject, about the time of the Congress at Ghent, in 1814, by which time the country in the neighbourhood of the sources of the St. Croix had been considerably occupied, and as such had become a disputed territory between the two nations. It was then agreed that a Joint Commission should be appointed to fix the boundary line as described by the Treaty of 1783: but the Commissioners could come to no agreement on the important point as to which was the head of the River St. Croix; Great Britain claiming a Western, and the United States an Eastern arm. The result was to refer the point to arbitration, which was decided against us; though many think erroneously so. Then came a new difficulty, as to the mysterious highlands, dividing the rivers which fall into the Atlantic and the St. Lawrence respectively. Great Britain claimed a point situated in latitude 46 degrees 40 seconds, the Americans wanted to go further north, as far as the 48th parallel. Again an arbitration; the King of the Netherlands being appointed judge. So hopelessly incomprehensible, however, were the conditions of Treaty, that the King of the Netherlands could make nothing of them, and rejecting both the British and the American lines proposed another line as a compro-

mise. This award was protested against by the United States, was not looked upon as very satisfactory by Great Britain, and by joint consent was repudiated in 1829. Further geographical explorations by Col. Mudge and Mr. Featherstonhaugh, in 1841, went far to prove the highlands claimed by the British to be entirely consistent with the definition in the Treaty, whilst the imaginary highlands claimed by the United States were found to be in a low marshy plain. Meantime, however, the American settlers were pushing their way North, the Maine people were bent upon conquest and occupation; and Lord Ashburton, an eminent London merchant, who had been a few years previously raised to the peerage by his friend Sir Robert Peel, was sent out to settle the affair as well as total inexperience (which, perhaps, under the circumstances, was an advantage) would allow him; but to settle it somehow. His Lordship well understood the purport of his mission, which was not to haggle about such trivial matters as territorial rights and nationalities, but to get rid of an embarrassing dispute. The consequence was that, finding the Americans very obstinate, and using very "tall language" about war, which they know is always a "settler" for the Britisher, he incontinently conceded all they demanded, which fixed the 49th parallel as the line of boundary, and signed the Treaty of Washington, May, 1842, which at the time was justly described as "a capitulation." What exasperates the feeling of annoyance and indignity occasioned by this Diplomatic *fiasco*, is the fact, which oozed out afterwards, that,

at the time, there actually existed in the Foreign Office at Paris a map of North America which had been referred to by Franklin, the negociator on the part of the United States of the Treaty of Versailles, as containing "a strong red line" marking the boundary, and which proved to be identical with the very line which we had claimed. Of this map it is more creditable to the 'cuteness than the honesty of the United States, to know that there were some who were engaged in the negociations with Lord Ashburton who were aware of its existence and its import.

As we have already intimated, a very considerable portion of the boundary agreed upon by the Ashburton Treaty, namely, all that portion running westward from the Lake of the Woods to the Rocky Mountains, remains to this day unsurveyed. It was amongst the instructions to the British Commissioners to endeavour to have this matter arranged; but when they mentioned it at one of the conferences, the American Commissioners replied that it "was a matter for administrative action, and did not require to be dealt with by a treaty provision."

The question of the Boundary on the East of the Rocky Mountains, so disastrously dealt with by Lord Ashburton, has no legitimate connection with the question of the North-Western Boundary, now in litigation, further than in the fact that in the course of negociations on the latter subject, the fatal 49th parallel has been extended into it. At the time of the Treaty of Versailles, the United States had no possessions west of

the Rocky Mountains, nor laid claim to any;—the Rocky Mountains being the boundary, running north and south, which limited the States on the western side. It was not until thirty years afterwards, namely, about the period of the Congress at Ghent, that any pretensions of the kind were put forward; and then upon the distinct, and somewhat inconsistent grounds,—first, of discovery and occupation, and secondly, of treaty concessions from France in 1803, and Spain in 1819. To go at any length into the controversies which have taken place under these heads, as bearing upon an abstract title, would not be of any use in regard to our present purpose, which has to deal with the actual position of the dispute, as affected by treaty arrangements made within the last sixty years. A brief statement of the pretensions on either side, will, however, be admissible, as tending to show the general bearings of the case, and the inducements to the arrangements made from time to time.

The claims of Great Britain to the large tract of territory on the western coast of North America, extending from California on the south to the Russian settlements on the north, date from the operations of Sir Francis Drake, who, in 1579, discovered the land in or about the 48th parallel, and coasted down to about the 30th parallel, when, as is recorded, he formally accepted the sovereignty from the natives, for the use of the Queen of England, and erected a pillar bearing an inscription commemorative of the act of cession. He gave the territory the name of New Albion, by which it con-

tinued to be called till about the year 1832, when it was called Oregon, after a supposed ancient name of the Columbia river, which traversed part of it. Very little attention, however, was paid to these possessions during the two centuries which elapsed till 1792, when Vancouver surveyed the coast, and took possession of the whole country, in the name of the King of Great Britain, on the 4th June, being the anniversary of His Majesty's birthday.

The United States' claim by occupancy, which is that upon which they chiefly rely, and for all practical purposes the only one which we need notice, is based upon the voyage of one Gray, who, on the 11th May, 1792, forced the passage of the river, in a merchant ship called the Columbia, after which he called the river, and sailed up it fifteen miles, when he could get no further, having missed the main channel. He then bent his way back, and on the 20th of the same month crossed the bar and regained the Pacific. It is on this small incident that the Americans have pretended to claim the River Columbia, and all the tract of country watered by it on either side. In opposition to this pretension it is held, first, that a private vessel cannot claim newly discovered territories in the name of a Sovereign State; and, secondly, that although by the Law of Nations the discovery and occupancy of a territory gives also a property in the rivers and waters within it, the converse position, that the discovery and occupancy of a river gives a title to the country drained by it, is not true. On the whole, so far as discovery and occupancy of this river itself goes, the

facts would seem to be in favour of the British claim, —inasmuch as Lord Broughton, who served under Vancouver's command, entered the mouth of the river on the 20th October, 1792, and in boats made his way up twenty miles further than Gray had gone, and took possession in the name of the King of Great Britain.

An irregular joint occupancy of the territory, known as New Albion, continued till the year 1818, though Great Britain never by any act surrendered her sovereignty over the whole, such as it had existed from the time of Drake. In that year, the subject having been under discussion ever since the meeting of the Congress of Ghent, conferences were held in London between the representatives of the two Governments, in the course of which the American Plenipotentary admitted "that the United States did not claim a perfect right to any portion of the territory west of the Rocky Mountains," and the British Plenipotentiary professed that his Government did not pretend to any exclusive right. In the result a convention was signed, the third Article of which provided as follows:—"That any country that may be claimed by either party on the north-west coast of America, westward of the Rocky Mountains, shall, together with its harbours, bays, creeks, and the navigation of all the rivers within the same, be free and open for the term of ten years from the date of the present convention, to the vessels, citizens and subjects of the two powers; it being well understood that this agreement is not to be construed to the prejudice of any claim which either

of the two contracting parties may have to any part of the said country; nor shall it be taken to affect the claims of any other power or state to any part of the said country; the only object of the high contracting parties, in that respect, being to prevent disputes and differences among themselves." This convention was renewed in perpetuity in 1827, with the option on either side of renounciug it on giving twelve months' notice. It was qualified, however, by the omission of the reference to the rights of foreign powers, the United States having, in 1819, signed a convention with Spain, and Great Britain, in 1825, a treaty with Russia, being the only powers who, in 1818, could pretend to any claims over any part of the territory.

In 1846 the United States gave notice of terminating this convention of joint occupancy, in the midst of a hot contest of disputed territorial rights which had been going on for some months. The fact was that in the course of time the fine quality of the soil and climate of these territories had begun to be recognized; and, favoured by the fortunate discovery of a remarkable pass in the Rocky Mountains, at the head of La Platte, vast tides of immigrants were beginning to pour into it. Mr. (afterwards Sir Richard) Packington most ably and triumphantly supported the rights of Great Britain against the sweeping pretensions assumed by the other side; but it soon became apparent, that, as in the case of the Maine Boundary question, unless we were prepared to support our claims with something more than argument, we had better cede quietly, what

was only to be effectually defended by force. The modest and reasonable pretension put forward by Great Britain was, that the boundary between the two countries should be made by a continuation of the line on the 49th parallel, till it joined the Columbia River, and that it should thence proceed down the middle of that river to the Pacific; Great Britain at the same time offering to give to the United States any port which they might desire, either on the mainland or on Vancouver's Island, south of the 49th parallel.

The United States utterly repudiated this proposal, and insisted on the 49th parallel as the procrustean rule, from end to end, between the two countries. It so happened, however, that the 49th parallel would have cut off from us a portion of the south-eastern extremity of Vancouver's Island, which we could hardly be expected to consent too, even on the demand of our insatiable opponents. In the end, the negociations were cut short by a proposition which was sent over by Lord Aberdeen, in which, abandoning all claim to the Columbia River, he proposed a clumsy medium course which was at once accepted, and embodied in the Treaty of Washington, signed June 15th, 1846. The boundary so agreed was described as starting from the point on the 49th parallel where the boundary laid down in existing treaties terminates, and then "continued westward to the middle of the channel which separates the continent from Vancouver's Island, and thence southerly through the middle of the said channel and of Fuca's straits

to the Pacific ocean,—provided, however, that the navigation of the whole of the said channel and straits south of the 49th parallel of north latitude remains free and open to both parties."

The misfortune of this hap-hazard arrangement was that, like previous boundary arrangements, it was formulated in ignorance of the geographical conditions of the place. In the total absence of surveys it was not known that "the channel which separates the continent from Vancouver's Island," running North and South, is no channel at all, in the true sense of the word, but an archipelago crowded with islands, amongst which various devious channels make their way. The principal of these islands is that of St. Juan, which, though intrinsically of no great value, is important in a strategical point of view, as commanding the approach to Victoria, the capital of Vancouver's Island; and, through the latter, that to all the British North American possessions. This island was first settled by the Hudson's Bay Company; and until recent disputes commenced, had always been considered British territory, and, as such, within the jurisdiction of the Government of Vancouver's Island. The method by which this peaceful occupancy was disturbed was in accordance with the usual marauding principles in vogue with our American cousins. In 1859, some squatters made their appearance upon the island, between whom and the original settlers disputes soon arose, in the course of which one of the former lost a hog. Upon this, General Harvey, of the United States

service, in command in Washington territory, a portion of the state of Oregon, so called, sent over some troops for the protection of American citizens, and their rights as such, and made nominal seizure of the whole island. This audacious encroachment was met by General Douglas, Governor of Vancouver's Island, who sent over a small detachment of troops, who landed upon the opposite side of the island to that occupied by the United States troops; and so was established a rival occupancy, which has continued ever since; a most anomalous, and discreditable condition of affairs, which none but a very weak and pusillanimous nation would permit to exist for a single day.

The question now is—who is to retain this important island? The United States insist that the boundary line, under the Treaty of 1846, should be taken down the Haro Channel which runs between Vancouver's Island and that of St. Juan; the British claim the Rosario Strait, which runs between the latter and the continent. The former line would give St. Juan to the United States, the latter would give it to Great Britain. The importance of the question in a strategical point of view, to which we have already alluded, is increased by the following considerations, that the Haro passage is narrow, and unsuitable for navigation except by steam, and might be commanded by the Island of St. Juan in such a way as to practically cut off from Vancouver all communication by sea with the main land; the only alternative passage, that of Queen Charlotte's Sound, being narrow, intricate and dangerous.

The arrangements for a settlement between the two Governments had been made in the abortive Treaty of 1869, and the British Commissioners proposed that an arbitration should be based upon that Treaty. The American Commissioners replied that "though no formal vote was actually taken upon it, it was well understood that the Treaty (of 1869) had not been favourably regarded by the Senate." They therefore declined the proposal for an arbitration having reference to that Treaty, and "expressed a wish that an effort should be made to settle the question in the Joint High Commission." This was assented to on our side; but the American Commissioners still insisting on the Haro Canal, the British Commissioners dissented, and the other side then suggested that "the Treaty might have been made under a mutual misunderstanding," and "therefore proposed to abrogate the whole of that part of the Treaty, and re-arrange the boundary line which was in dispute before that Treaty was concluded." The British Commissioners, having no instructions which would enable them to entertain this proposal, declined it, with the remark which has since the Alabama disputes been used against us with recriminatory effect,—that "the proposal to abrogate a Treaty was one of a serious character." After some further haggling, the British Commissioners proposing to adopt the middle channel (generally known as the Douglas Channel), and the Americans insisting upon the Haro Channel, the former again proposed to refer the matter to arbitration. The American Commissioners accepted

arbitration, provided the question should be limited to determine whether the line should run through the Haro Channel or through the Rosario Straits. We have here the clue to their repudiation of the Treaty of 1869, which stipulated, that "if the referee should be unable to ascertain, and determine the precise line intended by the words of the Treaty, it should be left to him to determine upon some line which, in his opinion, will provide an equitable solution of the difficulty, and will be the nearest approximation that can be made to an accurate construction of the words of the Treaty." The British Commissioners then proposed that "the Arbitrators should have the right to draw the boundary through an intermediate Channel." The American Commissioners declined this proposal, and also one "that it should be declared to be," the proper construction of the Treaty of 1846, "that all the Channels were to be open to navigation by both parties." In short, the American Commissioners had it all their own way, and Article 34 of the Treaty, after reciting the pretensions of the United States and of Great Britain as to the Haro Channel and the Rosario Straits respectively, agrees that the said respective claims "shall be submitted to the arbitration and award of his Majesty the Emperor of Germany, who, having regard to the Article of the Treaty of 1846, shall decide thereupon, finally, and without appeal, which of those claims is most in accordance with the true interpretation of the Treaty of June 15th, 1846."

Not to urge any objections on principle, the adop-

tion of arbitration in such a vital matter as the present, involving the actual sovereign rights of the country over a part of its territory, and imperilling the remainder, the terms of reference are open to great objection. The boundary as originally described in 1846 being, strictly speaking, impossible, it appears equally true that neither of the alternative lines suggested by the opposite parties is the "line most in accordance with the terms of the Treaty," both being far removed from the centre of the supposititious channel between the continent and Vancouver's Island. It would have been reasonable, therefore, that the whole question of selecting the channel "most in accordance" with the Treaty, whether "the middle channel," known as the Douglas channel, or any other, should have been left to the arbitrator. Indeed so palpably inconsistent with the spirit and intention of the Treaty of 1846, is the restriction to two alternative lines, that the arbitrator might, as we consider, feel himself justified in declining to decide between them, "having regard to the Article" of the Treaty in question. Again the refusal of the American Commissioners of the proposal on our part that "all the channels should be open to the navigation of both parties," is obviously at variance with the terms of the Treaty of 1846; and taken in connection with all the other circumstances of the case, justifies most serious apprehensions as to the ulterior objects which the United States may have in view in this matter. There is one consolation, however, in the consideration that, with all their cunning and obduracy, our opponents have not in

terms abrogated the provisions of the '46 Treaty in this particular. The arbitration only goes to settle the line which is to mark the boundary; and the stipulation that "the navigation of the whole of the said St. George's Channel and Straits [of Fuca] south of the 49th parallel of north latitude remains free and open to both parties" cannot be held to be in any way disturbed. In fact, our Commissioners need not have mooted the question, and the answer they received amounts to nothing.

The Treaty Condemned.

The conclusion we feel compelled, though with much reluctance, to arrive at in regard to the Treaty of Washington, of 1871, by denouncing it as the most mischievous, and humiliating that was ever signed by a Minister of this country. Its errors appear in every line, and are such as would operate to the disadvantage of ourselves, and others dependent upon us, in various ways at present little dreamed of. The frantic outcry which has been raised throughout the length and breadth of the land against the demand for "indirect damages," under "what are generically known as the Alabama claims," and which a heated fancy had conjured up to dimensions to be measured by hundreds of millions sterling, has hitherto diverted attention from the other provisions of the Treaty, which do not come for arbitration before the Tribunal at Geneva; and all the power of red tape has been used to avert that dreadful money involve-

ment, as the only impediment in the way of realising the dispositions of a Treaty considered to be, in all other respects, creditable and mutually advantageous. Delusive vision! The rights of our colonial dependencies, in the fisheries, and the navigation of their waters, have been ruthlessly sacrificed, their just claims for compensation for outrages committed in the Fenian raids, have been unblushingly set aside, but—not abandoned; nay, more, the very strategic security of our North American possessions themselves, as involved in the North-Western Boundary question, has been put into the possibility of peril by being referred to arbitration. Add to this, the humiliating apology, or "expression of regret" for the escape of the Alabama cruisers, "from whatever cause;" the "new rules," imposing intolerable responsibilities upon neutrals, which the United States insist upon "straining" to an extent which must tend to render neutrality more onerous than War itself, by putting neutrals to the responsibility and cost of "keeping the ring" for others to fight in, and eventually, perhaps, calling upon them, under one pretence or another, to pay all the cost of the war; and we think there has been shown enough to make us thankful if, whatever the consequences, we may be saved from the operation of so iniquitous and suicidal an instrument.

Would Failure of One Part of the Treaty affect the Whole?

The question has naturally occurred, in the course

of these proceedings, whether the breaking down of one part of the Treaty—as, for instance, the reference to arbitration of the Alabama Claims—would destroy the whole. It has been argued by the Government, and some of the leading organs of public opinion that such would not be the case; that the Treaty, being put together like an iron ship, in separate compartments, one may fail, yet the ship survive. We are inclined, however, to hold a different opinion. The preamble of the Treaty states that it is intended "to provide for an amicable settlement of *all* causes of difference between the countries," and there is no doubt that its various parts were framed with a view to a complete result; mutual—or shall we not rather say, one-sided sacrifices being made upon one point or another, in order to attain the one great object of arriving at a settlement of the whole mass of questions in dispute. On general principles it could not be allowed, that a power having signed a treaty concerning many distinct matters, should be at liberty afterwards to adhere to certain portions of the treaty, which it might consider conducive to its interests, and to repudiate the rest. Moreover, the repudiation of any portion of a treaty is *ipso facto* a *casus belli*, which, being acted upon, would destroy the whole treaty. In support of the opposite view of the case the Treaty of Vienna has been referred to, and it has been argued in an influential daily paper, that because the separation of Belgium from the Netherlands, contrary to part of the provisions of that treaty, was not held to destroy the

whole Treaty, the failure of the Geneva arbitration need not be fatal to the Treaty of Washington. But it occurs to reply, that the Treaty of Vienna was a general European settlement, agreed to at a congress of Sovereign States, and not restricted to a settlement of claims between one and another; whilst the Treaty of Washington is purely an agreement between two states for the settlement of certain matters in dispute between them, and until the carrying into execution of which, a right of some kind, on one side or the other, must remain in abeyance. Moreover, the conditions of the Treaty of Vienna were all duly carried out, the several arrangements agreed upon by the contracting parties fulfilled, and the Treaty completely executed, so far as it could be at the time. It was no violation of the Treaty that, in the course of subsequent events, many of its provisions should be rudely upset; nor even that, upon such occurrences taking place, the contracting parties, under altered views of policy, and in the altered circumstances of the case, should not have strictly enforced the guarantees entered into for the maintenance of its provisions.

But in the case of this Treaty with the United States, and the negociations which led to it, dating back to the time of Mr. Reverdy Johnson's mission, there are special grounds upon which we have a right to insist upon the operative unity of the Treaty in its several parts. And here, it is impossible to advance a step without impugning the American Government of bad faith, if not deliberate deception. It will be recollected, that four or five years ago, as

a consequence of the misunderstandings arising out of the Fenian raids, the United States Government demanded of us a treaty, and enactment, by which British subjects in the United States should be allowed, under certain conditions, to renounce their natural allegiance to their Sovereign. A greater infraction of the very fundamental principles of natural law was never heard of, and our Government at first displayed a creditable horror at the proposal; but eventually, as usual with them, they yielded to the demand. Upon reference to the American correspondence and protocols of 1868-9, we find that on the 19th September in the former year, Mr. Reverdy Johnson informed Lord Stanley "that he was not authorized to discuss officially the Alabama question, till the Naturalization question had been disposed of;" and a fortnight afterwards, the discussion of the St. Juan and Water Boundary question was also made dependent on carrying out the Naturalization Treaty; and, again, ten days after that, it was intimated that the signing of the St. Juan Boundary Convention should be made conditional on the previous execution of the Alabama Claims Convention. Well, the Naturalization Treaty was signed and ratified; and, in a communication announcing the fact, Lord Clarendon instructed Mr. Thornton to ask the United States Government, in consideration thereof, to cause to be signed and ratified the Claims Convention, and the St. Juan Boundary Convention. As we all know, they were not ratified, the Senate refusing its sanction; and in consequence of, or rather,

notwithstanding this scandalous juggle, and breach of faith, we rashly ventured to concur in the appointment of the Joint High Commission of Washington, in 1871, the mischievous blundering work of which is now before us.

LORD REDESDALE'S PUZZLE. ITS OMINOUS SOLUTION.

ONE of the most curious out-growths of the present disputes, is the proposition put forward by Lord Redesdale, early last year, and repeated again by him in the course of the recent discussions. In the abstract, his lordship suggests that, as the wrongful acts of which the United States complain were committed by the Southern States, which are now restored to amity, and form a common corporation with them, it would be unfair to mulct a neutral state for these acts, in damages, of which the Southern States, as part of the United States, would partake; thus profiting by their own wrong.

Lord Granville, when the suggestion was first made, declined to offer any opinion on the subject, and as late as the 14th June in the present year, he repeated that "he had no opinion for, or against, the argument." It is strange that upon so important a suggestion, he should not, in the course of a whole twelvemonth, have thought it worth his while to consult the law-officers of the crown, or even Sir Roundel Palmer, who is the counsel specially retained by the Government in this matter. It is, also, no less strange, that without any opinion as to the merits or bearings of the theory propounded, his lordship should have instructed the authors of

the British Counter-case to include an argument based upon it in the summary of general principles with which that document concludes. It must be obvious that if Lord Redesdale's theory is well founded, it would amount to a plea against all payments on account of the Alabama Claims; but as that would be repugnant to the conditions of the Treaty, why adduce it in the pleadings which are based upon that treaty? The fact is, Lord Granville was unable to form any opinion upon the subject, from the simple fact that there are no authorities, nor precedents, possibly to be brought to bear upon it. Under the established principles of international law, as they stood at the time these acts took place, no wrong was committed by any one, and consequently no claim for damages was possible against any one, as between State and State. The "new rules" have created the wrong and the remedy, which did not exist before; and hence the confusion and doubt as to where they should apply, involved in Lord Redesdale's argument, and in the plea based upon it, included in the British Counter-case. It is a mistake, however, to impute that by these acts the Confederate States "violated" our neutrality, and that "wrong was done by them to Great Britain, in the very infraction of her laws, which constitutes the foundation of the present claims." The "neutrality" of Great Britain as a state was not violated or even imperilled, by any of these acts; and the people of the Confederate States not being amenable to our municipal laws, could not be guilty of any "infraction" of them.

British subjects may have offended against our municipal law, and if they did, were open to punishment for so doing; but there is no penalty enforcecible against a belligerent state for having received from the subjects of a neutral, contraband of war, nor indeed has a belligerent any remedy against the latter for having supplied them; his only remedy being the right to seize and confiscate them, on the way for the purpose of delivery.

The corollary to all this is to suggest a very grave reflection as to what may possibly—nay, will almost certainly—arise out of these unfortunate "new rules," on any future occasion of war. It will be observed that they only impose obligations and penalties upon neutrals,—none upon belligerents. Well! suppose a case: Great Britain, France, and the United States, in common with other powers, have accepted the "new rules." France and the United States are at war, Great Britain is neutral; either or both belligerents may in spite of "due diligence" on the part of the United Kingdom, succeed in obtaining from her subjects the material aids prohibited by the "new rules" and by the Foreign Enlistment Act, and either or both may afterwards make claims, and enforce compensation against us, who will have no remedy against the offending belligerent or belligerents.

The Arbitration—Failure of the Supplemental Article—Appeal for Time.

It was a great mistake in principle, in the first instance, to consent to refer to arbitration matters

which we ought to have settled by the mere exercise of our own judgment, and deliberative will. Calvo in his 'Le Droit International Théorique et Pratique,' (2nd edition, Paris, 1870), states briefly and well what all jurists concur in, that arbitration, though a useful aid in some cases, should not be resorted to "in those in which the honour and dignity of the country are directly involved." And are not the honour and dignity of the British Crown involved, when we are charged with having "failed to fulfil our duties as neutrals," and that to such an extent that, besides making an "apology" for our conduct, we are to submit ourselves to penalties before a Court of Arbitration? Are our honour and dignity not involved, when the flag which waves over part of our possessions is menaced and put upon trial?

Nevertheless, arbitration having been adopted, we hold to the opinion already expressed, in concurrence with the position of the United States Government, that the arbitrators had full power and discretion to decide as to what properly fell within their province, under the terms of the Treaty. We think, also, with respect to the Indirect Claims, that upon the face of the Treaty, more especially the preamble, taken in connection with the protocols relating to it, the evidence is so strong that the arbitrators, guided by the well-known rules for the interpretation oftreaties, would have had no hesitation in giving a decision against them. We need not go at length into the principles which hold in these matters, but with regard to promises may mention

two principal canons. In the first place, when a promise is made it is to be interpreted in the way in which the promiser intended it, and had reason to believe that the promisee understood it to be made; evidence of which may be had by reference to the document itself, and other documents relating to it, or of a similar kind. Secondly, national law recognizes two kinds of contracts, those which are "favourable" and those which are "odious;" "favourable" contracts being those in which there is a mutuality of advantage, "odious" being those where the advantage is all on one side, and also those by which anything in the nature of a penalty is incurred. In "favourable" contracts, according to Grotius, "the words are to be taken in their full propriety, and, if ambiguous, in their largest sense;" whereas in "odious" contracts, "the words are to be taken in a more restricted sense." Vattel observes, further, that when a great injury is likely to be inflicted by the application of the wording of an "odious" contract, a "figurative interpretation" may be adopted in the interests of substantial justice; and adds this remarkable maxim, which is peculiarly applicable to the present unfortunate case, that in the interpretation of treaties which bear the character of one-sidedness, "the cause of him who seeks to avoid a loss, is more favourable than that of him who seeks to procure a gain."

Supposing it to be possible, however, that in spite of all arguments of the kind suggested, and others too voluminous to go into here, the arbitrators should have given a decision against us, accompanied

or not by an award of damages in a lump sum, we insist still that we should have done what was right in submitting to the jurisdiction of the tribunal, and that the case would not be altogether beyond the reach of remedy. Arbitration, as between private persons and between Sovereign States, differs in this essential particular, that in the case of the latter there is no power in the court to enforce its award, whilst at the same time there is no court of appeal to which the State can appeal against a wrongful decision. A Sovereign State knows no superior under heaven, and, at the same time, would have the right, and the duty, to resist an award in arbitration, not only such as a private person might appeal against, but such as in its discretion, and its sense of duty to its subjects —and this is paramount above all other considerations—it ought not to submit to. For instance, again quoting Calvo, who is here in accord with other authorities, a Sovereign amongst other grounds, would be bound, appealing to his own conscience, to repudiate an award which "bore upon questions not pertinent," or was "absolutely contrary to the rules of justice."

It would be an awkward alternative to have to recur to, no doubt; but still it would be open to us, should the necessity arise; and of course the expediency of resorting to it, or not, the occasion arising, would depend in great measure upon the amount of the damage to be avoided.

As it is, through the unskilfulness of our Government, we have drifted into a very absurd and discreditable position before the Court of Arbitration

at Geneva, which, according to the terms of the Treaty, commenced its sittings on the 15th June. After three or four attempts, at the dictation of General Schenck, Lord Granville at length succeeded in framing a Supplemental Article, which the American Government consented to submit for the approval of the Senate. The Senate sanctioned it, subject, however, to certain modifications which the British Government thought it their duty not to consent to; and proposed to modify the modifications.

The chief alterations proposed by the United States were in the enactive part, which they proposed should run as follows:—"Both Governments adopt for the future the principle that claims for remote or indirect losses should not be admitted as the result of failure to observe neutral obligations." Lord Granville, in his reply, held that the passage so worded was "so vague that it is impossible to state to what it is or is not applicable," and as such would only lead to "misunderstanding." He proposed to substitute the words "of a like nature," instead of "for remote or indirect losses," and the words, "such want of due diligence on the part of a neutral," instead of "for the failure to observe neutral obligations."

We confess we do not see a very clear—certainly not a broad—distinction between the two phrases; but Lord Granville, having been "once bit," was particularly "shy" of taking anything at the suggestion of the Washington Government. It appears to us that whatever form of words had been adopted, "misunderstanding" must have come out of them

whenever they came to be acted upon; and in this we have ample and convincing illustration of the dangers attendant upon all pretences to repeal or modify old-established principles of public law, which carry their own interpretation on their face, and in the precedents in which they have been applied.

Well, the American Government obstinately rejected Lord Granville's proposals—refused, indeed, to offer, or entertain, any further suggestions in the matter, and the Supplemental Article, from which so much was hoped, fell to the ground.

In this new dilemma, driven absolutely up into a corner, Lord Granville had to look about him to gain —that last hope of a bankrupt concern—a little time; aye, even if ever so little!—a week, a day, an hour! In the first instance, he communicated, May 28th, his impressions to the American Government that the Court of Arbitration would not have the power to adjourn its proceedings without the sanction of a short treaty between the two contracting parties. But Mr. Fish would not sign a treaty for the purpose, nor even agree to a joint application to the arbitrators for an adjournment. But this he was prepared to do, viz:—provided Lord Granville put in his "argument showing the points, and referring to the evidence upon which his Government relies," which it was, by Article V of the Treaty, his "duty" to do, on or before the 15th June, the American Government would assent to a proposal for adjournment if made by Great Britain. Lord Granville, with the usual fatuity which attends the habitually unfortunate, did not attach any importance to this

proposition; he has not put in his "argument." but he has applied to the Court of Arbitration to adjourn, say for eight months, in order to afford time for the two Governments to come to an "understanding. But, indeed, is he not already out of court, by his neglect to comply with the requirement of Article V; or, at any rate, has he not precluded himself from putting in any "argument" at any future time?

The Treaty Saved!

We had written thus far when the news arrived, that, after two or three adjournments of the Geneva Tribunal, made with a view of affording the contracting parties a last chance of coming to some sort of agreement, the arbitrators, acting on their own discretion, interfered, and "saved the treaty." The complication of Gordian knots which the diplomatic wisdom of the two high contracting parties could not untie—though both were desirous to do so,—the arbitrators have cut, by the trenchant argument of common sense.

On the 19th June, these gentlemen who have throughout shown great consideration for the unfortunate and misguided litigants before them, propounded a long statement, in which, after referring to the avowed purpose with which a long adjournment had been applied for by the British Government, they proceeded to express the opinion that there was no use in making any such delay in the hope of the parties coming to an "understanding," upon a matter upon which they (the

arbitrators) had already made up their minds. They stated that "after the most careful perusal of all that has been urged on the part of the Government of the United States in respect of these (the indirect) claims, they have arrived individually and collectively at the conclusion that these claims do not constitute, upon the principles of international law applicable to such cases, good foundation for an award of compensation, or computation of damages between nations, and would upon such principles be wholly excluded from the consideration of the Tribunal in making its award, if there were no disagreements between the two Governments as to the competency of the Tribunal to decide them." This was a happy deliverance to both parties; the United States was satisfied at having carried their point, that the Tribunal of Arbitration should give a decision of some sort on their claims; and the British Government, although it had utterly repudiated any deliberative authority in the arbitrators in this matter, were content to accept their decision when it proved to be in their favour; and by permission put in their summary of argument, which they had hitherto withheld. But supposing America had dissented from the *dictum* of the arbitrators—the inevitable result would have been a collapse. As it is, it will be observed that the *dictum* of the arbitrators was based upon "the principles of international law," the arbitrators having, in a previous passage in this important statement, studiously guarded themselves against "expressing or implying any opinion upon the

point in difference between the two Governments as to the interpretation or effects of the treaty."

Was there ever such a contemptuous dismissal of a great effort of international negociation? Was ever such a tame conclusion to a fierce diplomatic contention of six months' duration? Mr. Gladstone, on the 27th June, after announcing the lucky turn of affairs at Geneva, concluded by remarking: "As regards the general question involved in *a great controversy of this kind* (!), I cannot undertake to give a binding opinion, but it appears to me that not only we, but America, and all other countries, may derive great benefit from the discussions that have already arisen." Undoubtedly, if they profit by this opportunity, they will derive the benefit which all signal examples of mismanagement and failure afford, as warnings for the future. As far as the people of this country are concerned, if they do their duty, "the great controversy" which has just come to a pause, and other considerations connected with the Treaty of Washington, ought to give the death-blow to prerogative diplomacy.

On the 28th June the arbitrators adjourned till July 15th.

Conclusion—Neglect of Parliamentary Action in Regard to the Treaty.

Before withdrawing from the consideration of this Treaty, we beg to make a few remarks upon the manner in which it has been dealt with by the Government and Parliament respectively, having regard to constitutional principles.

It evokes, at the outset, serious and painful reflections to have to remark, that throughout the entire history of our international dealings, there has never yet been a case in which the assumption of administrative authority, and the remissness and complaisance of the legislature (going to the extent of the utter abandonment of its deliberative functions), have been more signally and disastrously manifested. As has been shown in the first part of this little volume, it has been the invariable practice, even in the degenerate days of the Georges, and later still down to the Treaty of Paris, of 1856, for the ministers of the Crown to lay a copy of every treaty on the tables of the two Houses of Parliament, on the earliest convenient day after its ratification, at the same time giving notice of a day for "taking it into consideration." On the appointed day an address to the crown was moved in each House, expressing approval of the treaty; which was followed by a debate in which the entire policy of the transaction, and the conduct of Ministers in regard to it, was discussed. In a word, the Treaty and the Ministry were both put upon their trial, to abide a deliberate vote of the House. In the case of the Washington Treaty nothing of this kind has taken place. The Treaty having obtained publicity ("surreptitiously" as the expression runs) previous to its ratification, immediately became the subject of irregular conversations, and, in the House of Lords, called from Earl Russell, in June, 1871, a resolution praying Her Majesty not to ratify any treaty which shall include "any conditions, terms, or rules, by which the arbi-

trator or arbitrators will be bound other than by the law of nations, and the municipal law of the United Kingdom." This resolution, after discussion, was negatived without a division; and from that time to this the Treaty has never been made the substantive subject of debate in either House. In the House of Lords there have been frequent occasional discussions, not, indeed, as to the merits of the Treaty, but as to the manner of dealing with it, in respect of the perplexing Alabama Claims; and these discussions, although most unpalatable to the Ministry, have had some good effect, in supporting the Government, and declaring the unanimous resolve of one portion of the legislature—re-echoed afterwards throughout the country—to resist at any risk the preposterous demands of the Washington Government. Earl Russell's threatened motion, in the present session, praying Her Majesty not to proceed further before the Court of Arbitration unless the indirect claims were previously withdrawn, was, after frequent postponements, at length brought forward on Tuesday the 4th June, and lasted till after midnight, when the debate on it was adjourned till the Thursday. In the interval, however, Lord Granville succeeded in obtaining a note from General Schenck to the purport that if the Supplemental Article, as amended by the United States Senate, were ratified, it would operate to the complete withdrawal and extinction of all the Indirect Claims. With this the House was satisfied, and Earl Russell consented to withdraw his motion; Earl Granville taking care, however, at the same time, to remind

the House that the Supplemental Article was not yet signed, and that all would depend upon whether it should be so eventually. But in the House of Commons the latitude of inquiry and discussion, so boldly assumed by the Lords, has not been permitted. In this branch of the legislature, owing to the immense mass of business with which the Minister habitually loads the Notice paper of the House, and his arbitrary disposal of the business arrangements, it is at all times almost a matter of impossibility to bring any subject before the House, for the purpose of discussion, without the consent of the Government. This permission Mr. Gladstone, in reply to repeated applications, has always persistently refused. Even so late as Thursday, the 6th June, when Earl Russell was having it all his own way in the House of Lords, with the full discretion of pressing, or withdrawing his resolution (which was looked upon as one involving "confidence"), Lord Bury was peremptorily denied, by the Premier, the opportunity of introducing a similar resolution in the House of Commons.

The representatives of the people are thus placed at an obvious disadvantage as compared with the members of the Upper House; and it would be curious to know what the feeling of the country would be on its arriving at a knowledge of this humiliating fact; if it could be ascertained by a *plebiscite*, or general ballot.

But, however unsatisfactory, because inconclusive, the result of the desultory discussions which have taken place on this subject, they are not without im-

portance as signally illustrating the inconveniences and absurdity inseparably attendant upon our modern system of diplomacy, and the attempt to enforce the pretensions of prerogative and secresy in affairs of international policy, which we denounced upon constitutional grounds in the first part of this work. It is, surely, not without significance, that Earl Russell, a nobleman who has seen nearly sixty years of public life, during many of which he acted as Foreign Secretary, and who was therefore fully aware of the prescriptions and supposed requirements of that office, should have stood forward to interpose parliamentary authority between a treaty and its ratification by the crown. It was something, also, to find Lord Redesdale, a man of routine, and well versed in precedents, expressing himself to the effect that "this case was an exceptional one, inasmuch as the arbitration might result in the adjudication of payments which would have to be made by vote of Parliament; and that under such circumstances it was right that Parliament should express an opinion on the Treaty before it was ratified." These facts afford practical and undeniable evidence against the theory of state policy which it has been our purpose to condemn, which cannot fail to have weight with the public when the matter comes to be properly appreciated.

In conclusion it is confidently submitted that, irrespective of earlier precedents and all other considerations, the recent Treaty of Washington together with the negociations connected with it, and the perilous novelties in international law proposed

to be established by it, afford ample evidence to condemn the modern practice of secret diplomacy, and to enforce the necessity for the resumption by Parliament of its legitimate consultative and controlling authority in all such matters. To this end no statutory provision is necessary; Parliament has already ample power, by address to the crown, or by the refusal of supplies if necessary, to enforce its rights, its authority, and the will of the people in what regards the conduct of public affairs; and it may be insisted that no exercise of those powers could be considered overstrained, or unjustifiable, when employed to arrest such "misunderstandings," such scandals, such ruinous responsibilities, as those which have been incurred to us by the Treaty of Washington of 1871.

It is hardly to be believed possible that Parliament—after its experience of six months of wearisome and humiliating anxiety in connection with this last Diplomatic miscarriage, should, through party influences, or unworthy apathy, neglect the occasion of reassuming the honourable and responsible functions they have too long neglected: but, if they should so fail in this duty, the duty of the country is plain. Let the constituencies throughout the empire, disregarding for the nonce little party and sectarian questions in which they are habitually too much engrossed, make Diplomatic Reform their one great test question, and Great Britain will once more take her proper place amongst nations and be freed from the dangers and disgrace with which she has been recently assailed.

SUPPLEMENTAL NOTE TO PAGE 179.

The Geneva Settlement, Excluding the Indirect Claims.

It was considered by us, at the time of writing, that the account given in the text of the declaration of the Arbitrators at Geneva, on the 19th June, in regard to the Indirect Claims, and what afterwards followed on the part of the contracting parties, might have been sufficient as establishing the effectual withdrawal of those claims on the part of the United States. Some hesitating remarks uttered in Parliament, however, which have been followed by more outspoken observations in some portions of the press, lead to the belief that some doubts are entertained by many intelligent persons upon the subject. The 'Pall Mall Gazette,' for instance, in an article published on the 29th June, distinctly declares it to be its "duty to point out that the assumption that the Indirect Claims are finally extinguished is a mistake;" and after a long and ingenious argument, based upon the statements of the Arbitrators and of the President of the United States, respectively, insists that "the claims are not withdrawn; they are held in abeyance (or so the American Government may hold, if they please), contingent on the fulfilment of a certain condition: namely, that the declaration of the Arbitrators shall be taken and agreed to as determinative of an important question of public law involved."

Under the circumstances, we consider the matter to be of sufficient importance to entitle it to more careful and elaborate attention than has been given to it in the preceding text.

It must be admitted, without reserve, that the extra-judicial interposition of the Arbitrators was not in accordance with

precedent, nor with the regulations laid down for their conduct in the articles of the Treaty. The British Government, not having put in their "argument" within the time prescribed, were strictly out of court, or at least, out of the power of putting in their "argument" at any later period. They had not, it is true, carried out the threat they had darkly suggested in their note "covering" their Counter-case, as to certain steps they might resolve to take in the case of their not coming to an agreement with the United States before the 15th June, the day fixed for the reassembling of the Tribunal; but it would appear that by the first article of the Treaty the functions of the Tribunal might at any moment be invalidated and its existence destroyed by the retirement of the Arbitrator appointed by them. It was under these circumstances, —the complete arguments on both sides not being in their hands, and it being questionable whether one of the parties was still before the Court,—that the Arbitrators volunteered a "statement," intended to remove an apparently insurmountable difficulty, in which they went to the extent of prejudging an important issue with which, strictly speaking, they were not as yet "seised." There is no doubt, as stated by us in the text, that the United States Government might have repudiated this proceeding, disavowed all cognizance of the opinion on the "principles of international law" propounded by the Arbitrators, and insisted upon the Tribunal proceeding to examine and determine the merits of the matter, as set out in their case, counter-case, and argument. But they did not adopt this course.

Yet, there were strong grounds upon which the United States might have so refused all consent to the exceptional course adopted by the Arbitrators, and its consequences, if they had thought proper. In the first place, the Arbitrators sought to prejudge the question as to indirect claims, "upon the principles of international law applicable to such cases," abstaining from expressing or embodying "any opinion" as to the interpretation or effect of the treaty:"—whereas they were charged to consider the claims as affected by certain "new rules," propounded for the purpose by the treaty, and in con-

formity with the proper "interpretation of the treaty," and especially as (possibly) ruled by the words "growing out of," more which everybody admits to be novel, and inconsistent with the usual "principles of international law."

There was, moreover, a special reason, as in equity between the parties, upon which the United States might have dissented from this extra-judicial interference of the Arbitrators, if they had thought it proper or desirable. There was, and still is, in existence a "supplemental article," agreed upon in principle between the two Governments, which provides for the withdrawal of the indirect claims by the latter, upon certain conditions as to future policy with regard to neutrals; and the acceptance of the course suggested by the Arbitrators, would necessarily go to abandoning the claims, without the stipulated equivalent. But no objection on this ground was raised by the United States.

Great stress is laid upon the seemingly guarded language in which President Grant acknowledged and accepted the statement of the Arbitrators, namely, that the declaration made by the Tribunal "is accepted by the President of the United States as determinative of *their judgment* upon the important question of public law involved,"—without any declaration of acquiescence in that judgment; which is followed by the announcement that, "consequently, the above-mentioned claims will not be insisted upon *before the Tribunal* by the United States, and may be excluded from all consideration in any award that may be made,"—no absolute withdrawal of the claims being made, such as to prevent their being revived on a future occasion in another form.

But those who write in this sense overlook that all these proceedings are governed by the terms of the Treaty, and that the Treaty distinctly refers to the Arbitrators "*all* the said claims growing out of the acts committed by the aforesaid vessels," and stipulates that "the high contracting parties engage to consider the result of the proceedings of the Tribunal of Arbitration as a *full, perfect, and final settlement* of all the claims hereinbefore referred to; and further engage that *every such claim, whether the same may or may not have*

been presented to the notice of, made, preferred, or laid before the Tribunal, shall from and after the conclusion of the proceedings of the Tribunal be considered and treated as *finally settled, barred, and thenceforth inadmissible.*"

Mr. Bancroft, on behalf of his Government, on the 27th June, permitted Lord Tenterden "to file the Argument of Her Britannic Majesty's Government," thereby waiving any objections on the score of default; and the "Argument" was then accordingly put in and filed, and the parties were thereupon again completely and formally before the Tribunal; all which facts are duly recorded in the protocol of the day's proceedings.

Finally, we have a right to expect that the award of the Tribunal, whenever it is made, will be consistent with what has been declared by them, and assented to by the United States, to the effect of excluding and disallowing the indirect claims; and that award, as we maintain, will be final, complete, and beyond all possibility of disturbance.

THE END.

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